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Supreme Court of the United States

OCTOBER TERM, 1963

No. [redacted] 17

JESSE M. CALHOON, AS PRESIDENT, OR HERBERT W. PETERS, AS SECRETARY-TREASURER OF DISTRICT NO. 1 NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO, PETITIONER,

vs.

RAYMOND H. HARVEY, ET AL., INDIVIDUALLY AND ON BEHALF OF OTHER PERSONS SIMILARLY SITUATED.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 20, 1963
CERTIORARI GRANTED JANUARY 20, 1964

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 688

JESSE M. CALHOON, AS PRESIDENT, OR HERBERT W. PETERS, AS SECRETARY-TREASURER OF DISTRICT NO. 1 NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO, PETITIONER,

vs.

RAYMOND H. HARVEY, ET AL., INDIVIDUALLY AND ON BEHALF OF OTHER PERSONS SIMILARLY SITUATED.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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[fol. A]

IN UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Docket

63 Civ. 2401

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated,

vs.

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of District No. 1 Marine Engineers Beneficial Association, AFL-CIO.

For plaintiff: Burton H. Hall, 136 Liberty Street, NYC.

[fol. B]

DOCKET ENTRIES

Date	
Aug. 12—63	Filed complaint and issued summons
Aug. 15—63	Filed summons and return. Served deft 8-13-63
Aug. 15—63	Filed show cause order to enjoin defts. etc. ret/8/20/63.
Aug. 15—63	Filed memorandum in support of pltffs. motion for preliminary injunction.
Aug. 19—63	Filed show cause order to dismissal complaint. ret/8/20/63.
Sept. 3—63	Filed affdvt. of Jesse M. Calhoon in opposition
Sept. 3—63	Filed affdvt. of Burton H. Hall in opposition
Sept. 3—63	Filed memorandum of deft. Union in support of its motion
Sept. 3—63	Filed Opinion #29,157—Motion to dismiss is granted and the application for a preliminary injunction is denied. This constitutes findings of fact and conclusions of law—Submit order on notice—Feinberg, J.

Date

Sept. 4—63 Filed order denying application for preliminary injunction & dismissing complaint for lack of jurisdiction—Feinberg, J.—Judgment entered—Clerk ent. 9-5-63

Sept. 5—63 Filed pltffs' notice of appeal—mailed copy to Pressman & Scribner

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[fol. 1] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

63 Civ. 2401

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated, Plaintiffs,

—against—

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of District No. 1, Marine Engineers Beneficial Association, AFL-CIO, Defendant.

COMPLAINT—Filed August 12, 1963

I.

Plaintiffs bring this action under Title I of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. Sec. 401, et seq., hereinafter referred to as the LMRDA. Jurisdiction of this action is conferred upon the Court by Section 102 of the LMRDA, 29 U.S.C. Sec. 412.

II.

Plaintiffs bring this action on their own behalf and on behalf of all other similarly situated members of defendant District No. 1, National Marine Engineers Beneficial As-

sociation (hereinafter referred to as District No. 1, NMEBA) to protect the right of all such members, including plaintiffs, to vote and to nominate candidates in elections of defendant.

III.

Defendant District No. 1, NMEBA, is and at all times hereinafter mentioned has been a labor organization engaged in an industry affecting commerce within the meaning of the LMRDA and the recognized representative of employees of employers engaged in an industry affecting commerce within the meaning of the LMRDA and a local [fol. 2] labor organization or subsidiary body chartered by a national labor organization, which is representing employees of such employers within the meaning of the LMRDA. Defendant is and at all times hereinafter mentioned has been an unincorporated association composed of approximately 6000 members, who are employed as marine engineers on vessels sailing to or from ports on the Atlantic and Gulf coasts of the United States. Defendant maintains its principal office at 17 Battery Place, in the City, County and State of New York and within the jurisdiction of this Court.

IV.

Plaintiffs are members, and each of them is a member, of defendant District No. 1, NMEBA; and each plaintiff has been a member in good standing, and is now a member in good standing, of defendant at all times hereinafter mentioned.

V.

Jesse M. Calhoon is President and Herbert W. Peters is Secretary-Treasurer of defendant; and each of them held such office at all times hereinafter mentioned.

VI.

Defendant District No. 1, NMEBA, came into existence on or about January 1, 1961. It was governed at such time and is still governed by a District Executive Committee

(hereinafter referred to as the DEC) composed of officials of various branches of defendant.

VII.

At the time of defendant's formation, as above set forth, the DEC was formed and composed of officials of the various locals whose members came within the jurisdiction of defendant.

VIII.

There has at no time been any general election for officers [fol. 3] of defendant or for members of the DEC, save for an election held by defendant to fill two vacancies, to wit: the offices of branch agent for Jacksonville, Florida, and Houston, Texas. Save for the two persons holding such branch agent offices, all the members of the DEC and all officers of defendant hold such office or membership on the DEC by reason of appointment or co-optation or some device other than popular election.

IX.

At or about the time of defendant's formation as above set forth, the DEC issued and declared a set of bylaws for the internal operation and government of defendant, hereinafter referred to as the District Bylaws. The said District Bylaws have never been submitted to membership vote, referendum or approval, but were "promulgated" or declared to be in effect by the DEC without any submission to membership approval. The said District Bylaws are in effect de facto and govern the internal operation of defendant insofar as they are not contrary to the LMRDA, or to any other law or public policy.

X.

Defendant is a subsidiary body chartered by the National Marine Engineers Beneficial Association, hereinafter referred to as National. National is governed in its internal operations by a constitution (hereinafter referred to as the National Constitution) insofar as the same is not contrary to the LMRDA, or to any other law or public policy.

XI.

The National Constitution, as amended, contains an appendix setting forth minimum requirements for district constitutions, and also contains a provision, Article X of the National Constitution, which governs all districts of National, including defendant.

[fol. 4] XII.

At all times prior to the formation of defendant, members of National were permitted and enabled and of right could nominate for office of subsidiary associations of National any person who met the qualifications for office, such qualifications being limited to a two-year period of membership in good standing, a requirement that the candidate not be employed as a salesman for a company in the marine field, a requirement that the candidate not be a member of a totalitarian organization, and a requirement that the candidate have his "primary occupation" as a marine engineer.

XIII.

The District Bylaws deprive members of defendant of their right to nominate persons other than themselves. Under the District Bylaws, the only candidate whom a member is permitted or allowed to nominate is himself; and the practice of defendant and of defendant's officers prohibits the member from nominating himself for more than one District office.

XIV.

In or about March 1963, National further restricted and infringed the right of members of defendant to nominate candidates for District office. At the said time, National amended the National Constitution, Article X, Section 9 thereof, to provide that no member could be eligible for nomination to or election as a fulltime elective office of a District unless he had been a member of National for five years and had served 180 days or more days of sea time on vessels covered by collective bargaining agreements with National or its subsidiary bodies in each of two of the three

years preceding nomination, the said requirements not applying to incumbent officials.

[fol. 5] XV.

In or about March 1963, National further infringed the rights of members of defendant to nominate candidates for the office of District President by amending the said provision, Article X, Section 9, to provide that a candidate for the office of District President must have previously been elected and served as a full time and paid official of a Subordinate Association, District or other organization affiliated with National.

XVI.

The said provisions of the District Bylaws and amendments to the National Constitution, as amended, violate and are contrary to the LMRDA, in that they infringe the right of members of defendant District No. 1, NMEBA, to nominate candidates in elections of defendant, which right is guaranteed to each member of defendant, and to each plaintiff, by Section 101(a)(1) of the LMRDA, 29 U.S.C. Sec. 411(a)(1).

XVII.

Article X, Section 3(g) of the District Bylaws, as amended, provides as follows: "The District President, subject to the approval of the District Executive Committee, shall designate an Impartial Administrator to supervise the conduct of the election. The Duties of such Impartial Administrator shall include: the mailing of the ballots, assuring the secrecy of and non-accessibility to the depository during the election, the mailing of duplicate ballots on written requests from members, supervising the ballot collection, and the tallying procedure with the Tallying Committee and to take such other measures as he may deem necessary to assure a fair and impartial election."

XVIII.

Insofar as the said Article X, Section 3(g) of the District Bylaws is not contrary to or in violation of the LMRDA

or of any other law or public policy, the said provision [fol. 6] defines and prescribes certain elements of the right to vote guaranteed to members of defendant by Section 101(a)(1) of the LMRDA, 29 U.S.C. Sec. 411(a)(1).

XIX.

The District Bylaws and the aforesaid provisions of the National Constitution provide that defendant District No. 1 shall hold its elections for officers and members of the DEC every three years, as required by Title IV of the LMRDA, 29 U.S.C. Sections 481 et seq. The said provisions, however, state that the first three year period is to begin in 1960, the year prior to defendant's formation. As a result, the first election for officers and members of the DEC of defendant, save for the election held as aforesaid to fill two vacancies, will be held in 1963 and future elections of defendant will be held at three year intervals thereafter.

XX.

Defendant has not afforded or permitted its members, or any of them, any opportunity to nominate persons other than themselves for any office in the said 1963 elections. Members seeking to make nominations with regard to such elections have been required to submit their own names and only their own names for such nomination. Defendant has further deprived members of defendant of their right to nominate any person for a second office and has insisted and required that any person seeking to nominate a candidate or candidates for more than one office would be limited to nominating himself for one office and would be prohibited from nominating any person for the second office.

XXI.

The said practices and requirements and refusals of defendant and of its officers to permit its members to nominate candidates for more than one office violates Section 101(a)(1) of the LMRDA, 29 U.S.C. Sec. 411(a)(1) by infring- [fol. 7] ing the right of each member to nominate candidates in elections of defendant, which right is guaranteed to each member by the said Section 101(a)(1).

XXII.

Plaintiffs have each of them protested the aforesaid infringements of their right to nominate candidates and have made every effort reasonably available to them to claim and exercise their right to nominate candidates. Plaintiffs have each of them submitted their nominations of themselves for the offices of Patrolmen of defendant, pursuant to the District Bylaws and the National Constitution. Plaintiffs' nominations of themselves have each been denied on the ground that they did not meet the sea time requirement aforedescribed. Plaintiffs Harvey and Shapiro have appealed from such denial to the membership voting by hand at branch meetings of defendant, that being the only method of appeal open to them within defendant and/or within National, and their appeals have been denied.

XXIII.

The provisions of the District Bylaws aforedescribed and the amendments to the National Constitution aforedescribed are unreasonable insofar as they infringe the right of members to nominate candidates for offices of defendant; and the eligibility requirements imposed by the said amendments to the National Constitution are unreasonable and oppressive in that they deprive the vast majority of members of defendant of any opportunity and of all right to nominate candidates for the office of District President, which office is the chief office of defendant, and in that they deprive a large proportion of defendant's members of the right to nominate any candidate for any office in defendant's elections.

[fol. 8]

XXIV.

Defendant and its officers have not and, on information and belief, will not designate any Impartial Administrator to supervise the 1963 elections above described or to supervise any future elections of defendant, unless this Court orders them to do so. By their failure to designate such an Impartial Administrator, defendant has infringed and will continue to infringe the rights of all members to vote in

elections of defendant, which right is guaranteed to each such member by Section 101(a)(1) of the LMRDA, 29 U.S.C. Sec. 411(a)(1), and has violated and will continue to violate Section 3(g), of Article X, of the District Bylaws, above set forth.

XXV.

Plaintiffs have protested the failure of defendant to designate an Impartial Administrator, in every reasonable manner open to them, and have exhausted every reasonable method of appeal open to them within defendant and/or within National.

XXVI.

Unless otherwise ordered by this Court, defendant and its officers will continue to infringe the right of plaintiffs and of all other members of defendant to nominate candidates and to vote in elections of defendant, and by so doing will cause plaintiffs and all similarly situated members of defendant to suffer grievous and irreparable injury and the loss of valuable and material rights for which there is no adequate remedy at law.

XXVII.

Plaintiffs have at all times herein mentioned complied with the obligations imposed upon them by law and by all rules and regulations governing the internal affairs of National and of defendant and of all subordinate or subsidiary organizations of National and have sought by all means available to them to achieve redress for the wrongs done and for the infringement of their rights as above set forth, [fol. 9] and have exhausted all reasonable hearing procedures within defendant and/or National available to them.

Wherefore, plaintiffs pray for judgment as follows:

1. permanently restraining and enjoining defendant, its officers, agents, servants, employees, attorneys and all other persons in active concert or participation with any of them from conducting or causing to be conducted any election, and from mailing or causing to be mailed, any ballots to

be used or purporting to be used in any election of defendant, unless and until defendant has afforded to each of its members a fair opportunity to nominate any persons meeting fair and reasonable eligibility requirements for any or all offices to be filled by such election;

2. permanently restraining and enjoining defendant, its officers, agents, servants, employees, attorneys and all other persons in active concert or participation with any of them from conducting or causing to be conducted any election, and from mailing or causing to be mailed, any ballots to be used or purporting to be used in any election of defendant, unless defendant or its officers have theretofore designated and appointed a person impartial in all respects with regard to such election to act as Impartial Administrator over such election pursuant to Article X, Section 3(g) of the District Bylaws;

3. directing defendant to afford to each and to all of its members a fair opportunity to nominate candidates for all offices to be contested in any and all elections of defendant, and to nominate therefor any person or persons meeting reasonable eligibility requirements;

4. for such compensatory and punitive damages as may be appropriate; and for the costs and disbursements of this action; and for a reasonable attorney's fee; and

5. for such other relief as may be appropriate.

Dated: New York, N. Y., August 12, 1963.

Burton H. Hall, Attorney for Plaintiffs, 136 Liberty Street, New York 6, N. Y.

[fol. 10] [File endorsement omitted]

In United States District Court
Southern District of New York
63 Civ. 2401

[Title omitted]

Order to Show Cause—August 12, 1963
and Filed August 15, 1963

At New York, N. Y., in such district on August 12th, 1963.

Upon the attached affidavit of Raymond H. Harvey sworn to the 10th day of August, 1963, and upon the summons and complaint herein, and upon all the papers and proceedings herein, it is

Ordered, that the defendant herein show cause before this Court at a Motion Part thereof to be held at the United States Court House, Room 506, Foley Square, New York, N. Y., on August 20, 1963, at 10:00 a.m. of that day or as soon thereafter as counsel can be heard, why an order should not issue herein enjoining and restraining defendant, its officers, agents, employees and attorneys, pending trial and ultimate disposition of this action, from conducting or causing to be conducted any election, and from mailing or causing to be mailed, any ballots to be used or purporting to be used in any election for officers of defendant, unless and until defendant has afforded to its members a fair opportunity to nominate candidates in such election; and directing defendant, its officers, agents, employees and attorneys to afford to each member of defendant a fair opportunity to nominate candidates for office in defendant; [fol. 11] and for such other, further and different relief as may be appropriate; and it is further

Ordered, that service of this order to show cause, together with a copy of the papers hereto attached, upon defendant herein on or before August 14th, 1963, at 3:00 p.m., be deemed sufficient service.

Dated: August 12th, 1963.

H. R. Tyler, Jr., United States District Judge.

[fol. 12]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

AFFIDAVIT OF RAYMOND H. HARVEY

State of New York,
County of New York, ss.:

Raymond H. Harvey, being duly sworn, deposes and says:

That he is one of the individual plaintiffs in this action, brought to protect the rights of the plaintiffs and of all other members of District No. 1, NMEBA, to nominate candidates and to vote in elections of District No. 1, NMEBA; and that he makes this affidavit in support of plaintiffs' motion for a preliminary injunction herein, directing defendant to afford to its members the right to nominate candidates for the elections scheduled to be held by it between September 1, 1963, and November 30, 1963.

The nub of plaintiffs' motion is as follows: District No. 1, NMEBA—a local labor organization of some 6000 members—will hold its elections for officers during the ninety-day period starting September 1, 1963. But its officers, in order to perpetuate their hold on office, have deprived and will continue to deprive its members of their right to nominate candidates unless this Court otherwise orders.

[fol. 13] The devices by which the officers are denying this right to the members are as follows:

(1) members are prohibited, by defendant's by-laws, from nominating any person other than themselves for any office: each member may submit only his own name, no one else's (and no nomination meetings have been or will be held);

(2) members are prohibited, by a ruling of defendant's officers, from nominating themselves to more than one office apiece; hence a member who has nominated himself for one office is prohibited from nominating anyone at all for any other office; and

(3) members who are not already office holders are required to meet outrageously high sea-time requirements

(imposed retroactively, on the eve of the 1963 elections) in order to nominate themselves for any office—hence a large proportion of defendant's membership is prohibited from nominating anyone at all for any office whatever!

These rules were imposed upon defendant's members by officers and District Executive Committee (or "DEC") members who came into office without being elected thereto. The 1963 elections will be the first general elections to be held by defendant (the only previous election being called specially to fill two DEC vacancies), the first opportunity defendant's members will have to elect their own officers.

It is therefore of crucial importance to the members of defendant that their democratic rights be protected in the 1963 elections. To protect those rights—specifically, to protect the members' rights to nominate candidates—this motion is brought.

[fol. 14] 1. The Infringement of the Right to Nominate.

Prior to January 1, 1961, NMEBA was subdivided into local unions, each local union having jurisdiction over a port. Under the national constitutions and local union by-laws that then prevailed, each member was guaranteed the right to nominate any other member, subject to certain eligibility requirements, for any local office. Local union nominations were called for, made and accepted at nomination meetings held in advance of local union elections. Nominations for national offices were called for, made and accepted at national conventions held in the year of election, each delegate to such convention having the right to nominate any other member for any national office, subject to certain eligibility requirements.

Prior to January 1, 1961, the eligibility requirements for office were limited to (a) a requirement that a candidate have been a member in good standing for a set period of years (two for local—and, until March 1963, for district—office; five for national office), (b) a requirement that the candidate not be employed as a salesman for any company operating in the marine field, (c) a requirement that the candidate not be a member of a totalitarian organization,

and (d) a requirement that the candidate have his "primary occupation" as a marine engineer.

On January 1, 1961, local unions in the NMEBA were abolished and replaced by district organizations—one of which was and is defendant District No. 1. The DEC was formed by NMEBA to govern District No. 1 and to "promulgate" a set of by-laws for it. It was composed of already-elected local union officials. This DEC "promulgated"—but did not submit to membership vote or for membership ap- [fol. 15] proval—a set of bylaws which came into effect in 1961 and which, with certain amendments, are still in effect.

These "promulgated" bylaws deprive each member of defendant of his right to nominate persons other than himself for office. Article X, Section 1 of those bylaws provides that a member may "submit his name for nomination"—his own name—by sending in a letter to that effect. No other method of nomination is permitted. No nomination meetings, at which one member might place another's name in nomination, are held or have been held; there is no method by which one member may submit another's name in nomination.

And defendant's practice makes this restriction even more onerous. Defendant, by its "credentials committee," has ruled (in the case of candidate John F. Roman) that a member may nominate himself for only one office. Thus a member who has nominated himself for Branch Agent (i.e., business agent for a port) may not nominate himself for District President—even though he waives all compensation (as candidate Roman did) for the latter office! In other words, a member who has nominated himself for one office is forbidden to nominate himself for any other office.

And the crowning point in the deprivation of nomination rights was reached on the very eve of the 1963 elections, when the National NMEBA amended its constitution, in March 1963, to deprive—retroactively—all non-office holding members of the right to nominate themselves for any District office unless they had served 180 days or more of sea time on NMEBA-contracted vessels during *each* of two, out of the previous three, years.

In addition, the National Constitution was also amended, in March 1963, to provide that no member could be a can-

didate for District President unless he had been a full-time, paid official; and to provide that no member could be a [fol. 16] candidate for any District office unless he had been a member of NMEBA for five years (the previous requirement had been two years).

The effect of these rulings, amendments and provisions is to deprive the great majority of defendant's members of their right to nominate any candidate for the office of District President, and to deprive a large proportion of defendant's members of their right to nominate any candidate for any office whatsoever!

First, by defendant's bylaws, each member is deprived of his right to nominate members other than himself for any office. Second, by the ruling of defendant's credentials committee (backed up and supported by the National Executive Committee of NMEBA), each member is deprived of his right to nominate any member at all for a second office —not only is his choice of nominee limited to himself, but the office to which he can nominate himself is limited to one. And third, the member's remaining right to nominate himself for one office is infringed and (in many cases) denied altogether, by the new and extraordinarily restrictive eligibility requirements.

There has so far been only one election held by District No. 1—a by-election to fill vacancies in the offices of Branch Agent for Jacksonville, Florida, and Houston, Texas. The 1963 elections will be the first opportunity that District No. 1's members will have (and the only opportunity until 1966) to elect their officers and the members of their DEC as a whole. The deprivation of nomination rights in District No. 1 therefore affect the District's 6000 or so members in a serious manner now for the first time.

[fol. 17] 2. The 1963 District Elections.

Elections for national officials are now being held. Ballots in the District No. 1 elections are scheduled to be sent out to the members on or about September 1, 1963. The period for "submitting" nominations has already expired. Unless this Court provides immediate relief, the members of District No. 1 will be deprived of their right to nominate candidates for office in the District No. 1 elections, and

the elections will be conducted on the basis of the above-described procedures which deprive the members of all right to nominate persons other than themselves and which deprive many (perhaps most) members as well of the right to nominate themselves.

Members of District No. 1 have been afforded no right or opportunity whatever to nominate persons other than themselves. No nomination meeting has been held or will be held, unless this Court so orders. And members seeking to nominate themselves have been subjected to the extreme restrictions on eligibility described above.

Each of the three individual plaintiffs has attempted to exercise the only nomination right afforded him under the District No. 1 bylaws, the right to nominate himself. Each plaintiff has been denied this right on the ground that he did not serve 180 days of sea time on NMEBA-contracted vessels in each of two of the three years, 1960-1962.

The status of these three individual plaintiffs illustrates the degree to which members of District No. 1 are denied even the already-limited right of nominating themselves. [fol. 18] Each has been a member of NMEBA for more than five years and a professional marine engineer for more than five years, with his primary occupation that of a marine engineer. Each plaintiff has been a member of District No. 1 since its inception and of his local union prior to that. Yet each is denied eligibility under an oppressive and discriminatory sea-time requirement (discriminatory, since paid officials and appointive officials (the latter being, quite obviously, allies of the incumbent officialdom) are excepted from it).

Your deponent is one member of District No. 1, NMEBA, who has served more than 180 days of sea time as a marine engineer during *each* of the past three years. During 1960 and 1961, however, he was a voluntary, unpaid organizer for NMEBA—officially designated as such—aboard vessels not contracted with NMEBA. As a result, the bulk of his sea time during those two years is not credited to him and he, along with the other two plaintiffs as well as many other members, is denied the right to nominate any person whatever—himself or anyone else—for any District or National office in NMEBA.

Your deponent has been a member in good standing of NMEBA since 1952. He was a member in good standing of Local 33 (New York) from that date until the local was abolished in January 1, 1961; since then he has been a member in good standing of District No. 1, NMEBA. Plaintiff John Galletta has been a member of NMEBA in good standing since 1957, being a member of Local 33 (New York) until January 1, 1961, and thereafter a member of District No. 1, continuously in good standing. Plaintiff Herman Shapiro has been a member in good standing of NMEBA since 1947, being a member of Local 59 (Boston) until January 1, 1961, and a member of District No. 1 thereafter, con-
[fol. 19] tinuously in good standing.

Each plaintiff duly submitted his name for nomination as Patrolman, deponent and plaintiff Galletta for Patrolmen, New York Branch; plaintiff Shapiro for Patrolman, Boston Branch. Each plaintiff's nomination was denied by defendant on the ground that each was disqualified by reason of insufficient sea time. Defendant asserted that its records show the following amount of sea time for each plaintiff:

	1960	*1961*	*1962*
Raymond H. Harvey	9	2	216
Herman Shapiro	144	144	311
John Galletta	126	178	129

The grounds for the rejection of plaintiffs' nominations illustrate the degree to which the new, restrictive eligibility requirements further restrict nomination rights. The sea time served by each is approximately equal to, or greater than, the amount of sea time served by the average, active marine engineer who is a member of NMEBA—even during years in which the industry is prosperous. During years in which the industry is in a slump, the average member serves far less sea time than that served by plaintiffs in the past three years. Hence the eligibility restrictions based on sea time threaten to destroy those democratic rights of NMEBA members which still survived prior to the March 1963 constitutional amendments.

Your deponent verily believes that the restrictions upon the members' rights to nominate candidates for office in District No. 1, NMEBA, have been imposed by the officers of defendant and of National NMEBA for the improper purpose of perpetuating themselves in office and depriving [fol. 20] NMEBA members of democratic rights to control their union affairs.

Unless this Court otherwise orders, defendant will deprive and continue to deprive plaintiffs and all other members of defendant of their rights to nominate candidates for office in the 1963 elections of defendant District No. 1, and your deponent, his fellow plaintiffs, and all other members of defendant will be severely prejudiced thereby and will lose thereby valuable and material rights, including the right to control their union democratically and to impose democratic responsibility on the officers of defendant, both with regard to union affairs generally and with regard to the handling and disposition of the union treasury.

By the loss of such rights, pending trial, your deponent, his fellow plaintiffs, and all other members of District No. 1 will suffer irreparable and grievous injury for which there is no adequate remedy at law.

Your deponent and his fellow plaintiffs have exhausted all of their intra-union remedies. Each has attempted to nominate himself for union office—the only method of nomination allowed to members by the District Bylaws—and the nomination of each has been denied by defendant's officials. The only appeal allowed from such denial is to the membership, voting by hand vote at Branch meetings (i.e., in full view of the defendant's officials, who hold power over the members' job opportunities). Your deponent and plaintiff Shapiro have exhausted even this, unreasonable appeal procedure. Plaintiffs have no remaining remedy save to come to this Court.

[fol. 21] No previous application for the relief requested herein has been made to this or to any other Court or agency.

The reason why this motion is brought on by order to show cause instead of by notice of motion is that there is

not sufficient time for this motion to be heard on ordinary ten-day notice before the date on which ballots in the defendant's election are scheduled to be mailed.

Wherefore, your deponent prays that plaintiffs' motion for a preliminary injunction, protecting their right and the right of all members of defendant to nominate candidates in the 1963 elections of defendant, be granted.

Raymond H. Harvey.

Sworn to before me this 10th day of August, 1963.

Burton H. Hall, Notary Public, State of New York, No. 24-6732129—Qual. in Kings Co., Commission Expires March 30, 1964.

[fol. 35] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

63 Civ 2401

[Title omitted]

ORDER TO SHOW CAUSE—August 14, 1963
and Filed August 19, 1963

Upon the annexed motion and the affidavit of David Scribner, duly sworn to August 14, 1963, and the complaint herein, it is

Ordered that the plaintiffs show cause at a Motion Term of this Court to be held in Room 506, United States Court House, Foley Square, City and State of New York, on the 20th day of August, 1963 at 10:00 o'clock of that day or as soon thereafter as counsel can be heard, why an order should not be made herein dismissing the complaint, and

It Is Further Ordered, that service of a copy of this order and the papers upon which the same is granted, on Burton H. Hall, Esq., attorney for plaintiffs on August 16th, 1963 before 4:00 P.M. o'clock shall be sufficient service of this order.

Dated: August 14, 1963.

H. R. Tyler, Jr., United States District Judge.

[fol. 36]

In United States District Court

Southern District of New York

63 Civ 2401

[Title omitted]

Defendants' Motion to Dismiss Complaint—
Filed August 19, 1963

Defendants move the Court under Rule 12(b) of the Rules of Civil Procedure for an Order dismissing the Complaint herein on the grounds that the Court lacks jurisdiction over the subject matter and that the Complaint fails to state a claim upon which relief can be granted.

Dated: August 14, 1963.

Pressman & Scribner, Attorneys for Defendants, 50 Broadway, New York 4, N. Y.

[fol. 37]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

63 Civ 2401

[Title omitted]

AFFIDAVIT OF DAVID SCRIBNER

State of New York,
County of New York, ss.:

David Scribner, being duly sworn, deposes and says that he is a member of the firm Pressman & Scribner, attorneys for the defendants herein.

This affidavit is submitted in support of defendants' application for an order directing the plaintiffs to show cause at a Motion Term of this Court on August 20, 1963 why an order should not be made herein dismissing the complaint.

On August 12, 1963, Honorable H. R. Tyler, Jr., District Judge for this District, signed an order upon application of the plaintiffs directing the defendants to show cause at a Motion Part in this Court on August 20, 1963 why an order should not be entered in respect to a current union election. Copies of the order to show cause and the accompanying papers were served on defendants on August 13, 1963, late afternoon.

[fol. 38] It is respectfully submitted that a hearing on the same day of the plaintiffs' application for a restraining order and defendants' motion to dismiss the complaint herein will conserve the Court's time and will serve the interests of all parties. The issues involved in both motions are necessarily related and the Court would be aided by a joint hearing on both. If after argument on both motions the Court were to dismiss the complaint on the grounds urged by defendants, the application for a restraining order would necessarily fall.

Defendants cannot proceed by motion within the time required by the rules in order to have their motion to dismiss heard on the same day as plaintiff's application for a preliminary injunction.

Wherefore, it is respectfully requested that defendants' motion to dismiss be made returnable on August 20, 1963 at 10:00 A.M.

No previous application for the relief requested herein has been made to this or any other Court.

David Scribner.

Sworn to before me this 14th day of August, 1963.

Barbara Ann Weinstein, Notary Public, State of New York, No. 24-9581575, Qualified in Kings County, Cert. filed in New York County, Commission Expires March 30, 1964.

[fol. 39] Affidavit of Service (omitted in printing).

[fol. 40] [File endorsement omitted]

In United States District Court

Southern District of New York

No. 63 Civ 2401

[Title omitted]

Affidavit of Jesse M. Calhoon in Opposition to Application for Preliminary Injunction—Filed September 3, 1963

State of New York,
County of New York, ss.:

Jesse M. Calhoon, being duly sworn, deposes and says he is Chairman of District 1 National Marine Engineers' Beneficial Association, AFL-CIO.

The plaintiffs in this case essentially complain about the qualifications established for office in District 1 MEBA and that although the District 1 Constitution requires that an impartial administrator be designated to conduct the election, that no such body has or will be designated.

At the outset, before I go into the questions raised as to the qualifications for Union office, it must be noted that an impartial administrator has been designated, as required by the Constitution, and that there is not the slightest truth

in the wild assertion made by plaintiffs that District 1 had no intention of designating an impartial administrator. [fol. 41] This impartial administrator was designated after all appeals by any nominees for office who had been declared disqualified had been acted on by the Union's branches, as provided in District 1 By-laws. Almost immediately after receiving official notice of the action of the Union's branches on the appeals from any disqualified candidates, and pursuant to Article X, Section 3(g) of the District 1 By-laws, the law firm of Kreutzer, Helfer & Selman was designated on August 14, 1963 as the Impartial Administrator to supervise the conduct of the election. That was the earliest time that the impartial administrator could be designated since their first function was to cause the printing and mailing of the ballots, which could only be done after the list of qualified nominees was established.

This law firm designated as Impartial Administrator consists of highly reputable members of the Bar whose unquestioned integrity will insure that the balloting and the balloting count in the secret ballot election for District 1 officers will be conducted in a fair and impartial manner.

S. Stanley Kreutzer, who has been practicing law for more than 30 years, has held many governmental posts. He is currently counsel to the New York City Board of Ethics and counsel to the New York State Assembly on Ethics and Guidance. He is also a member of the Executive Committee of the Citizens Union.

Benjamin Heller was secretary to Mr. Justice Meier Steinbrink of the Supreme Court of the State of New York; Kings County for a period of 13 years; former associate counsel to the City Council of the City of New York in ouster proceedings against certain councilmen and in the formulation of a code of ethics for the officers and employees of the City of New York; and was associate counsel for [fol. 42] a Legislative Committee of the New York State Assembly in respect to questions of ethics.

Martin H. Selman has served as Trial Counsel for the National Labor Relations Board and as attorney for the New York State Labor Relations Board.

Before going into the complaints as to the Union's Constitutional provisions regarding the qualifications for candidacy to District 1 office, I should like to acquaint the Court with the history, accomplishments and democratic nature of the Marine Engineers' Beneficial Association. I do this in order to dispel the wild and unsupported statement by plaintiffs' counsel in his brief that "The background to the disqualifications and deprivals is one of bureaucratic skullduggery." (Plaintiffs' Memorandum, Page 4.)

National MEBA is an established and respected Union representing almost 95% of the licensed marine engineers in the country. It has been in existence for some 85 years. It is and has been an accredited affiliate of the AFL-CIO. Consistent with its long tradition of democratic trade unionism, annual conventions are held with delegates elected by the membership through a referendum secret mail ballot vote. Financial accountings are supplied quarterly at membership meetings. Officers are elected by secret balloting referendum. Collective bargaining agreements require the ratification of the membership affected. The financial affairs of the Union are meticulously accounted for. There has never been a scandal affecting the handling of the Union's funds. The auditing of the Union's books and accounts is entrusted to a reputable firm of certified public accountants well known for their competency and integrity. [fol. 43] Marine engineers' wages and working conditions negotiated and established through collective bargaining agreements are commonly recognized as the best in the maritime industry. The same is true for the negotiated pension, welfare and vacation benefits for the marine engineers represented by MEBA. In addition, the Union has an unparalleled and enviable record in the successful handling of grievance and arbitration procedures in the interests of marine engineers.

I shall now address myself to the plaintiffs' charges concerning the qualifications for District 1 office, as provided in the Union's Constitution and By-laws. I must first observe that there is no charge or complaint by the plaintiffs that the Union has violated its Constitution and By-laws with respect to qualifications for District 1 officers. Plaintiffs concede that the disqualifications complained of

were in accordance with the Union's Constitution and By-laws but assert that those constitutional provisions are improper.

Plaintiffs first complain that the Union's Constitutional requirement that a candidate may be his own nominee for District office is unfair and restrictive. This is absurd on its face. Far from creating any restriction, this provision permitting every member of the Union to nominate himself for Union office is the broadest possible procedure to insure that every member of the Union may be nominated for office. All a member has to do is to nominate himself. This provision was specifically designed to eliminate any possible impediment in respect to the opportunity for every member of the Union to have his name offered as a nominee for of-
[fol. 44] fice. The Union was particularly sensitive to the fact that since its members are seafaring men they cannot always attend Union meetings. The usual requirement in union constitutions that nominations be made at either union meetings or union conventions was felt to be too restrictive of the rights of seafaring men to be nominated for office. And so, as of January 1, 1961, constitutional provisions affecting District 1 subordinate bodies which required that a candidate could be nominated *only at Union meetings* were changed to allow each member to nominate himself, regardless of whether or not he appeared at a meeting, merely by his mailing to the Union his statement that he was a nominee and providing the necessary information so that the Credentials Committee could make a determination as to whether or not he met the Constitutional requirements for Union office.

The report to the Constitution Committee to the March, 1963 National Union Convention recommending the same procedure for the nomination of National officers stated:

> "What this does, basically, is make a complete change in the old method of nomination. Under the existing Constitution, the only way a man can be nominated for National office is if he *is nominated at the Convention.* That means he has to be physically present, or he has to have a representative to the Convention nominate him. Then he has to notify the National Balloting

Committee within ten days after the close of the Convention whether or not he accepts. That makes it fairly difficult under the existing language to take care of being nominated.

"The changes were made to establish the same type of nominating procedure which is in existence in the District By-Laws. As you have heard the items read off, you can see where it provides much greater opportunity for a member to be nominated for National office, and fulfills the requirements of the Landrum-Griffin Bill."

[fol. 45] The amendment was adopted by substantially more than the two-third requirement for Constitutional amendments.

It is my firm belief that the procedure adopted is the most democratic method. It makes it easier for any member who wishes, to nominate himself. He does not have to appear at the convention or any meeting or rely on somebody else to present his name in nomination at the convention. Nor is there a requirement, as appears in some maritime union constitutions, that the nominee must submit together with his nomination an endorsement by other Union members.

Moreover, every member of the Union had sufficient notice, even if he were at sea, to take advantage of the opportunity for nomination to District office. In the District No. 1 elections, nominations had to be submitted by July 12, 1963. All applicable provisions of the Union Constitution with respect to District elections were incorporated in the March, 1963 issue of the American Marine Engineer, the official Union newspaper. The May, 1963 issue of that paper carried the full text of the applicable provisions of the National Constitution and District No. 1 By-laws under a heading in bold face: "Eligibility Requirements for Office in District 1." The June, 1963 issue of the American Marine Engineer again gave specific information as to the District No. 1 election procedures and the nomination deadline. These newspapers were regularly mailed to the membership at their home address and were also sent to vessels on which they were sailing.

It is important to note that none of the plaintiffs have been in any way hurt or affected by the provision allowing self-nomination by any Union member. *The fact is that each plaintiff has taken advantage of the Constitutional* [fol. 46] *provision and has nominated himself.* Thus, the plaintiffs have benefited from the Constitutional provision, as have all other members of the Union who decided that they wished to run for District office. It is incredible to me that any charge of unfairness could be made as to a procedure whereby any member of the Union may, by his own decision, unencumbered by any other consideration or condition, have his name placed in nomination merely by writing a letter to the Union stating that that was his desire.

The practice of self-nomination for election to national office is commonplace among the Unions in the maritime field. For example, the constitutions of the Seafarers International Union, the National Maritime Union and the Marine Cooks and Stewards Union all provide for self-nomination as the exclusive procedure for nominations to office. (The latter two unions require that the nominee must also have the endorsement of a substantial number of other union members for his nomination, a condition not required in MEBA.)

All three plaintiffs were declared disqualified by a Credentials Committee, consisting of three rank and file members of the Union elected by the membership and who are not running for office, on the sole ground that plaintiffs had not complied with the provision of Article X, Section 9 which requires "180 days of employment on vessels covered by collective bargaining agreement with the Union during each of any two full calendar years of the three calendar years immediately preceding the closing date of nominations . . . " Plaintiffs admit that their sailing time fell short of the Constitutional requirements. It should be noted that this Constitutional requirement was interpreted by [fol. 47] the Credentials Committee *to permit vacation time during each of the three preceding years to be computed as part of the sailing-time requirement.* Each of the plaintiffs was so credited. However, even with this liberal interpretation of the Constitution, the plaintiffs' sailing time did not fulfill the Constitutional requirement. The effect

of the allowance of vacation time (from six to ten days per month) in the computation of sailing time is that only four and one-half to five months of sailing time within each of two of the three years before the election would satisfy the Constitutional requirement. Moreover, periods of illness are likewise credited towards this sailing time requirement.

It is common practice in the maritime industry for unions to require as a condition for elective office that the candidate be actively engaged as a seafarer for specified periods prior to the nominating time. The Seamens International Union requires three years sea-time; the Marine Firemens Union requires 90 days sea-time on union contracted vessels for the twelve months preceding the member's nomination, and three years sea-time experience or at least twelve months service as a seaman before the nomination on a vessel covered by the union contract; the National Maritime Union requires three years sea-time and the nominee must not have been ashore more than six months preceding his nomination; the Sailors Union of the Pacific requires that nominees shall not have been ashore over six months at the time of nomination and must have three years actual service on ships; Marine Cooks and Stewards Union requires that a nominee must have three years sea-time on ships under union contract and six months sea-time on union contract ships between January 1 of the year of nomination and the time of nomination. These maritime unions, as does the MEBA, credit elected full-[fol. 48] time officials with their time in office against the sea-time required. If this were not done, elected officials would be penalized for having served in office by being denied the right to run for union office.

The rationale for requirement of sea-time experience in one form or another is apparent. Essentially, a union of seamen, and in the case of Marine Engineers' Beneficial Association, licensed marine engineers, is designed primarily to protect and advance the interests of its members who have not left their calling but are substantially engaged as seamen. This is a fundamental concept with all unions including those outside of the maritime field. Can it be said, therefore, that it is an unfair requirement that

any member who wishes to run for office in a union should be required to show that he has continued to function in the industry for a substantial period of time prior to his nomination for office? Only those members of the Union who continue to be actively engaged in their calling as marine engineers and those acting as full-time, elected officers would truly know and understand the problems in the industry and be able to administer the affairs of the Union in the interest of its members.

The particular qualifications for MEBA District 1 officers, i.e., service of 180 days on Union contracted ships for each of two years during the three years preceding the nomination, is a reasonable qualification for District office. That was the judgment, by substantially more than a two-third vote, of the delegates to the March, 1963 Convention at which this qualification was adopted. It should be added that the delegates to the Union Convention at which this [fol. 49] amendment was voted were all elected as such by the membership in a secret ballot referendum vote and thereby represented the wishes and interests of the entire membership.

Plaintiffs appear to complain of the fact that the time the amendments referred to above were adopted, the Convention also adopted an amendment striking out the prior requirement of two years *consecutive good-standing* membership immediately prior to the nomination. The Convention substituted therefor a requirement of five years previous membership in the National Union and two years in a District or local body prior to the nomination (Article X, Section 9). *The amendment does not require consecutive "good-standing" membership during those periods.* The nominee need be in good standing only at the time of nomination and election. The very purpose of this amendment, as stated by the Constitution Committee in its report to the Convention, was to eliminate what the Committee felt was "too stringent" a requirement. The Convention agreed and adopted this amendment by substantially more than the two-thirds required vote. None of the plaintiffs were disqualified for failure to comply with that requirement. Indeed, only one nominee of more than some 125 members who were nominated was held disqualified on any such

ground, every other nominee having complied without the slightest difficulty.

The plaintiffs next complain about the Union's Constitutional provision which requires as a qualification for candidacy for office of District President (this qualification does not apply to any other District office) that a member must have "previously been elected and served as a full-time and paid official of a subordinate association, District or any other organization which is duly affiliated with the [fol. 50] National Association." (National Constitution Article X, Section 9.) But none of the plaintiffs chose to run for the office of District President. As to the respective offices for which they were nominated, there is no requirement that they have any such past service as an officer in order to be qualified. They have no cause, therefore, for complaint.

In any event, such requirement is reasonable as it applies to the office of District 1 President because of the nature of the special problems in the maritime industry. The District President is directly responsible for and actively participates in collective bargaining negotiations affecting the membership in the District, and it is common knowledge that collective bargaining problems in the maritime industry are more difficult and complex than in almost any other of the country's industries. As a Presidential Board of Inquiry, consisting of the Hon. Samuel I. Roseman, Hon. James J. Healy and Hon. David L. Cole, reported to the President of the United States on July 2, 1961: "The collective bargaining structure in the maritime industry is most complex . . ." and again, "The collective bargaining relationships in this [maritime] industry are . . . exceedingly complicated and confusing."

The protection of job security for maritime personnel and especially for marine engineers in a fluid industry where ship sales and transfers and complicated intercorporate transactions affecting the ownership or operation of ships occur constantly require the most sophisticated and knowledgeable union representation. The wage structures, manning scales, pension and retirement and vacation systems as well as the dispute settlement procedures and new and developing problems in the industry, such as automation, par-

[fol. 51] ticularly as they affect marine engineers, are so complex and must be so carefully planned, structured, negotiated, applied and policed as to require that certainly the District 1 President have at least the minimum prior experience as a full-time officer of the District or of a local as required by the Constitution. Such background serves to insure that the interests of the entire membership will be fully protected particularly since the problems in this industry are becoming daily more complex.

Such qualification is not unusual in the maritime field. The National Maritime Union, AFL-CIO (NMU) constitution requires as one of the qualifications for national office that the nominee must have served "at least one (1) full term as a Branch Agent, Field Patrolman, or Patrolman" (Article 9, Section 1(b) of the NMU Constitution on file with the Bureau of Labor Reports in the U.S. Department of Labor). That provision requiring prior service of a *full term* of office must be distinguished from the MEBA requirements of *any* prior service as an officer. The NMU Constitution, including the aforementioned qualification provision, was subject to the closest scrutiny by the Secretary of Labor in a proceeding instituted by him against the NMU in this Court (*Mitchell* v. *National Maritime Union*, Civil Action No. 3821, 1960). The parties terminated that litigation by stipulation and the action was discontinued with prejudice. The particular qualification as to prior service of a full term was in no way affected by the litigation and I am advised that the current NMU Constitution still has the same qualification requirements and that that requirement is still operative.

[fol. 52] Moreover, many Union members have held prior office in the District or in a local Union body and would be eligible for the office of District President, assuming they have the other required qualifications. And plaintiffs do not suggest that the qualifications for the office of District President, have been discriminatorily applied or that they were not uniformly imposed on all members.

Plaintiffs also complain that a member may not run for two full-time Union offices. Again, none of the plaintiffs ran for two full-time offices nor were they disqualified for any such reason. The National Executive Committee of

the Union has ruled that it was the intent of the District By-laws that a member may not at the same time run or serve in more than one full time District elected office. This is obviously a reasonable interpretation. I am advised by Counsel that there is no requirement in the Landrum-Griffin Act or elsewhere requiring that union constitutions permit union members to run for more than one full time union office. It is indeed curious that the plaintiffs object to any such limitation. Any complaints in respect to this issue are usually against the holding of more than one full-time union office. It was in apparent response to complaints *against* the holding of more than one office, that the Secretary of Labor ruled "there is nothing in the Labor-Management Reporting and Disclosure Act of 1959 which prohibits the holding of more than one office if the constitution and by-laws permit such practice." (Bureau of Labor Management Reports, Technical Assistance Aids No. 5, p. 20). In other words, it is *not illegal* to hold more than one office. But that is a far cry from saying that it *is illegal* for a union [fol. 53] to ban the holding of more than one office. That ruling of the Secretary of Labor makes it clear that the Union Constitution prevails and that it is up to the Union to decide whether it wishes to permit or prohibit the holding of more than one Union office.

Plaintiffs stress that this District election is important. With that I wholeheartedly agree. Every Union election is important to the membership. And this election, as has already been noted, will be under the direct supervision of Kreutzer, Heller & Selman, the noted firm of attorneys.

In their papers plaintiffs intimate that the By-laws of District 1 have not been subject to membership action. While plaintiffs do not attack the legal validity of the procedures whereby the By-laws were adopted, I should like to acquaint the Court with the procedures which led to the adoption of these By-laws as they are now constituted.

In 1960 a secret ballot referendum vote was held among the entire National membership of MEBA in respect to a reorganization plan recommended by an annual convention of the Union. The question presented was whether District organizations should be set up with all members of the local organizations in each District being members of their

respective District, thus pooling their strength in regional organizational bodies. One important consideration among others for this proposed reorganization was that under the existing plan of organization members of a local who were constantly traveling as a result of their seafaring employment could not attend their own Branch meetings nor were they permitted to attend or have a voice in meetings of [fol. 54] a local Union body elsewhere in the same District where the member might then be. Under the proposed District reorganization, members of each District would be able to speak and vote at membership meetings held in any of the Branches of the District organization. No member could be disenfranchised because he was not in his own Branch or local on meeting night. Another important consideration was that shipowners and operators had organized their collective bargaining on a centralized basis. This obviously required a union form of organization based on a larger geographical area than that of a local body to cope with the problems created by the employers' collectiv 'argaining and operational structures.

The planned reorganization was adopted by the entire membership in this secret ballot referendum by an overwhelming vote. I might add that the action of the 1960 Convention which made the reorganization recommendation and the procedures of the referendum approving and adopting the plan of reorganization, were judicially approved by the U.S. District Court for the Southern District of Alabama, Southern District, by an order dated May 3, 1963 granting a summary judgment on the merits in favor of MEBA, in *Calagaz* v. *Kellogg*, Civil Action No. 2566; *Calagaz* v. *Calhoon*, Civil Action No. 2626; and *Clinton* v. *Hueston*, Civil Action No. 2591.

The election of the officers of the local bodies of the Union were going on during the same period that the National referendum on the reorganization was taking place. The referendum provided that if the reorganization was adopted by the membership, the officers who had been elected by the secret ballot vote of the members of the respective local bodies within a District would be, by virtue of such election, [fol. 55] elected to office in their respective District. The referendum also provided that the Union assets and prop-

erty of the local bodies were not to be affected in any way by the formation of the District organization.

The District organization, through the District Executive Committee, its leading body, thereupon proceeded, also pursuant to the referendum program adopted in the secret ballot referendum, to adopt District By-laws. Thereafter the District Executive Committee called a Special By-laws Conference to consider the By-laws and to recommend any changes and revisions. The Special By-laws Conference was held in July, 1962 and was composed of delegates elected by the Union membership of every Branch in the District. After the delegates had voted upon recommended revisions and changes in the District By-laws, the District Executive Committee ordered a District-wide membership secret ballot referendum vote on the adoption or rejection of the revisions recommended by the Special By-laws Conference. Such a referendum vote was held under the supervision of Dr. Donald F. Shaughnessy. The present District By-laws (copy of which is attached as Exhibit "A") is the product of that secret ballot referendum vote and more recent amendments.

Despite plaintiffs' assertions to the contrary, they have not exhausted the internal Union procedures available to them in respect to the issues they now raise in this Court. One of the plaintiffs, namely John Galletta, has not even filed an appeal from his disqualification by the Credentials Committee to the membership of the District. Article X, Section 2(c) of the District No. 1 By-laws provides in [fol. 56] relevant part: "When an applicant has been disqualified by the Credentials Committee, he shall be notified immediately by telegram at the address listed by him in his letter of nomination. He shall also be sent a letter containing the reasons for such disqualification by air mail, special delivery, registered, to be same mailing address. A disqualified applicant shall have the right to take an appeal to the membership from the decision of the Committee . . ."

Nor have any of the plaintiffs appealed to the National Executive Committee either from the action of the membership of the District or from the action of the District Credentials Committee, as provided in Article XII, Section 2

of the National Constitution. Nor can it be said that there was not enough time for them to follow this procedure. The fact is that the ballots for the election of District officers are required by the District By-laws to be sent out on or about September 1, 1963. Even as of August 10, 1963, the date of plaintiffs' supporting affidavit to this Court, there were at least twenty days within which an appeal to the NEC could be filed and processed. Under the National Constitution, the NEC does not have to meet in order to act on appeals. The NEC may act by mail or wire, assuring early disposition of any appeal. In any event, plaintiffs did not even attempt to test the time element involved in an appeal to the NEC.

Plaintiffs also waited for a period of more than two and one-half years to file a suit in this Court or otherwise test the validity of the District By-laws giving each member the right to nominate himself for District offices. The District By-laws so providing became effective January 1, 1961. It is unconscionable that plaintiffs should have waited for two [fol. 57] and one-half years and until the election procedures had actually commenced before attacking the validity of that provision of the Constitution.

I respectfully submit to the Court that there is no valid cause for complaint on the part of the plaintiffs and that the complained of qualifications for election office in the District are reasonable and consistent with the requirements of the democratic process. I am also advised by Counsel that the Labor-Management Reporting and Disclosure Act of 1959 requires that plaintiffs proceed by filing whatever complaint they think they have in respect to qualifications for union office with the Secretary of Labor who, if he considers that the union has violated any provision of Title IV of that law, can then file a complaint with this Court to remedy the situation.

(For the convenience of the Court, attached is a copy of the National 1962 Constitution as Exhibit "B", and the National 1963 Constitution as Exhibit "C")

Jesse M. Calhoon.

Sworn to before me this 19th day of August, 1963.

Ned R. Phillips, Notary Public, State of New York, No. 24-8361125, Qualified in Kings County, Certificate filed in New York Co., Commission Expires March 30, 1964.

[fol. 58]

EXHIBIT "A" TO AFFIDAVIT OF JESSE M. CALHOON

(See opposite) ☞

By-Laws

OF

DISTRICT NO. 1

OF

NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION

OF THE

UNITED STATES OF AMERICA

1963

National Association Organized February 23, 1875

By-Laws

OF

DISTRICT NO. 1

OF

NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION

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1963

National Association Organized February 23, 1875

704

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for
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of
NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION

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BY-LAWS
of
DISTRICT No. 1
of
NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION

ARTICLE I

Name and General Powers

This organization shall be known as "District No. 1" chartered by the National Marine Engineers' Beneficial Association. Its powers shall be legislative, judicial and executive.

A majority vote of the membership shall be authorization for any Union action, unless otherwise specified in the National Constitution or these By-Laws.

ARTICLE II

Membership

Section 1. As of the effective date of these By-Laws, the members of the Subordinate Associations of the Atlantic and Gulf Districts shall be deemed members of this organization.

Section 2. Candidates for membership shall be admitted to membership subject to and in accordance with the applicable provisions of the National Constitution and such rules as are adopted from time to time by the District Executive Committee, unless otherwise ordered by a majority vote of the membership.

Section 3. The members of this District shall be entitled to all the rights and privileges of members and subject to such duties and

responsibilities including the payment of dues and other financial obligations as are provided in the National Constitution. No member shall be entitled to any benefits of the Union or be considered in good standing unless his dues are paid up for the full current calendar quarter or paid in accordance with any dues checkoff system under any collective bargaining agreement maintained by the National or this District.

ARTICLE III

System of Organization

Section 1. This District, its officers, representatives and members, in any and all Branches, shall be governed in this order by:

(a) The National Constitution and these By-Laws,

(b) District Executive Committee, and

(c) Majority vote of the membership.

Section 2. The Headquarters of the District shall be located in New York and New Orleans. Branch offices shall be maintained, unless changed as elsewhere provided in these By-Laws, in Headquarters and the Ports of Boston, Philadelphia, Baltimore, Norfolk, Jacksonville, Miami, Tampa, Mobile, Houston, Galveston and such other Ports as may be determined by the District Executive Committee.

Section 3. There shall be a District President.

Section 4. There shall be a District Vice President.

Section 5. There shall be one Branch Agent for each of the Port's Headquarters and for each additional Port designated in Section 2.

The number of Patrolmen if any, for Headquarters Ports and for any other Port shall be determined as elsewhere provided in these By-Laws.

The Branch Agent for New York Headquarters shall, in addition to his regular duties, assume the title and duties of Secretary-Treasurer.

Section 6. The Headquarters and the several Branches shall be manned by such officers and staff personnel as shall be determined by the District Executive Committee, unless otherwise directed by a majority vote of the membership.

Section 7. There shall be a District Executive Committee consisting of the District President, the District Vice President, Secretary-Treasurer and the other elected Branch Agents.

Section 8. A quorum for meetings of the District Executive Committee shall be a majority of those eligible to attend.

Section 9. All official meetings in this Union shall be recorded by minutes.

Section 10. Pending the first regular District-wide election:

(a) The membership and voting basis of the District Executive Committee shall be in accordance with the provisions of the National Constitution pertaining to District Executive Committees. Any such member must be either a National officer or an official of the District Organization.

(b) All full time and paid officials of the Subordinate Associations on the Atlantic and Gulf Coasts, elected in the 1960

elections, shall be officials of the District Organization for the term of their office.

(c) The District Executive Committee shall have the authority to bestow the appropriate titles upon such officials and to assign any of said officials to such duties, as it may determine, for the efficient and effective administration of the affairs of the District Organization, unless otherwise directed by a majority vote of the membership.

(d) The District Executive Committee shall have the authority to designate its own officers, from among its own members, bestow appropriate titles and allocate among them the necessary powers, duties and responsibilities for the full administration of the affairs of the District, subject to the authority of the District Executive Committee and the membership.

ARTICLE IV

Officers and Representatives

Section 1. The officers of the District shall be elected, except as otherwise provided in these By-Laws. These officers shall be the District President, the District Vice President, the Branch Agents and those specific Patrolmen so designated by the District Executive Committee.

Section 2. The Representatives to the National Convention shall also be elected. The District President and Branch Agents shall be ex officio delegates to the National Convention. At the election of officials of this District it shall be stated, in addition to the District Pres-

ident and Branch Agents, that they are also delegates to the National Convention and they shall so become. The Union may elect in addition such additional Representatives and alternates as the District Executive Committee may determine, unless otherwise directed by a majority vote of the membership consistent with the provisions of the National Constitution.

ARTICLE V

Other Elective Jobs

Section 1. In addition to the elective jobs provided for in Article IV, the following jobs in the District shall be voted upon in the manner prescribed by these By-Laws:

Committee Members of:
(a) Trial Committee
(b) Strike Committee
(c) Credentials Committee
(d) Constitutional Committee
(e) Tallying Committee

Section 2. Additional Committees may be formed upon recommendation of the District Executive Committee, unless otherwise directed by a majority vote of the membership. Committees may also be appointed as permitted by these By-Laws.

ARTICLE VI

Duties of Officers, Representatives and Other Elected Personnel

Section 1. District President

(a) The District President shall be the executive officer of the District and shall represent and act for and in behalf of,

the District in all matters except as otherwise specifically provided for in these By-Laws.

(b) He shall be a member ex officio of all committees, except as otherwise herein expressly provided.

(c) He shall be in charge of and responsible for all District property and shall be in charge of Headquarters, Branch Offices and all other Ports within the jurisdiction of the District. Whenever there are time restrictions or other considerations affecting District action, he shall take appropriate action to insure observance thereof.

(d) In order that he may properly execute his responsibilities, he is instructed and authorized to employ any help he deems necessary, be it legal, accounting or otherwise.

(e) At the regular meeting in May of every election year, he shall, subject to the approval of the District Executive Committee, submit to the membership a preballoting report. In his report he shall recommend the specific Ports (in adtion to Headquarters) for which Branches will be maintained and the Branches for which Patrolmen are to be elected and the number, if any, and unless otherwise ordered by a majority vote of the membership, the report shall be deemed accepted.

He shall also in such report recommend a post office, or any other similar depository, to which the ballots are to be mailed or delivered.

(f) He shall be Chairman of the District Executive Committee and may cast one vote in that body.

(g) He shall be responsible for the signing of new contracts and contract enforcement.

(h) He shall be responsible, within the limits of his powers, for the enforcement of these By-Laws, the policies of the District and all rules and rulings duly adopted by the District Executive Committee and those duly adopted by a majority vote of the membership. Within these limits, he shall strive to enhance the strength, position and prestige of the District.

(i) The foregoing duties shall be in addition to those other duties lawfully imposed upon him.

(j) The responsibilities of the District President may not be delegated but he may delegate to a person or persons the execution of such of his duties as he may in his discretion decide, subject to the limitations set forth in these By-Laws.

(k) He is directed to take any and all measures and employ such means which he deems necessary or advisable to protect the interests and further the welfare of the District and its members in all matters involving national, state or local legislation issues and public affairs.

(l) He shall have the authority to require any officer or representative of the District to attend any regular or special meeting if in his opinion it is deemed necessary.

(m) The District President in the event of incapacity on the part of any elected officer, shall, subject to the approval of the District Executive Committee, designate a replacement provided he is qualified under the National Constitution and these By-Laws to fill the job.

Section 2. Vice President

(a) He shall perform any and all duties assigned him or delegated to him by the District President, or the District Executive Committee.

(b) He shall be in charge of and coordinate all activities of the Branches, including Headquarters in New Orleans, in the Gulf area.

(c) He shall be responsible for the signing of all new contracts with companies in the Gulf area.

(d) He shall be a member ex officio of all committees, except as herein otherwise expressly provided.

Section 3. Secretary-Treasurer—Branch Agent for New York Headquarters

(a) He shall perform any and all duties assigned him or delegated to him by the District President. He shall be responsible for the organization and maintenance of the correspondence, files and records of the District, setting up and maintenance of sound accounting and bookkeeping systems; the setting up and maintenance of proper office and other administrative procedures; the proper collection, safeguarding and expenditure of all District funds.

(b) He shall submit to the membership for each quarterly period, a detailed report of the entire District's financial operations. The Secretary-Treasurer's report shall be prepared by an independent Certified Public Accountant.

(c) He is instructed and authorized to employ any help he deems necessary, be it legal, accounting, or otherwise subject to the approval of the District President and the District Executive Committee.

Section 4. Branch Agents

(a) The Branch Agent shall be in direct charge of the administration of District affairs in the Port or Ports of his jurisdiction.

(b) He shall, within the jurisdiction of his Port or Ports, be responsible for the enforcement and execution of these By-Laws, the policies of the District and the rules adopted by the District Executive Committee and/or a majority vote of the membership.

(c) He shall be prepared to account, financially or otherwise, for the activities of his Port or Ports, whenever demanded by the District President, District Vice President or Secretary-Treasurer.

(d) In any event, he shall prepare and forward to the Secretary-Treasurer, a weekly financial report showing in detail weekly income and expenses and complying with all other accounting directions issued by the Secretary-Treasurer.

(e) The Branch Agent shall assign each Branch Patrolman to such duties as fall within the jurisdiction of the Branch.

(f) The Branch Agent shall designate which members at that Port may serve as representatives to other organizations affiliations with which have been properly authorized.

(g) The foregoing is in addition to those other duties presented elsewhere in these By-Laws.

(h) Where practical and feasible, within the economy of the District, Branch Agents shall be empowered to assign an elected Patrolman or other employee of the District to devote the necessary time and effort as is required to provide full and complete counsel, guidance and service to those members who are entitled to the benefits of the MEBA Plans under the several MEBA Collective Bargaining Agreements.

Section 5. Branch Patrolmen. Patrolmen shall perform whatever duties are assigned to them by the Branch Agent of the Port to which they are assigned or by the District President and/or the District Executive Committee.

Section 6. District Executive Committee

(a) The District Executive Committee shall meet in Headquarters or in one of the Branches no less frequently than once each quarter and at such other times as the District President or in his absence the Vice President may direct. The District President, or in his absence, the

District Vice President shall be the Chairman of all District Executive Committee meetings.

(b) Each member of the District Executive Committee, except as otherwise provided in these By-Laws, shall be entitled to cast one vote in that body. Its decision shall be determined by majority vote of those voting, providing a majority of its members are present constituting a quorum.

(c) It shall be the duty of the District Executive Committee to develop policies, strategies and rules which shall advance and protect the interests and welfare of the District and the members. The adoption of any such recommendation by a majority vote of the District Executive Committee shall make the provisions thereof binding District policy, unless modified or otherwise altered by a majority vote of the membership, provided such recommendation is not inconsistent with the provision of these By-Laws.

(d) The Secretary-Treasurer, or in his absence an appointee of the District Executive Committee, shall keep accurate minutes of all meetings of the District Executive Committee.

(e) The District Executive Committee shall determine; subject to the National Constitution, the terms and conditions of affiliation for any group of workers desiring affiliation.

(f) The District Executive Committee shall be responsible for all contract negotiations, the formulation of bargaining de-

mands and the submission of proposed collective bargaining agreements to the membership for ratification.

(g) The District Executive Committee shall direct the administration of all District affairs, properties, policies and personnel in any and all areas including those not otherwise specifically provided for in these By-Laws.

(h) The District Executive Committee shall have such other powers, duties and authority conferred upon District Executive Committee by the National Constitution.

(i) Notwithstanding the foregoing, the District Executive Committee may act without holding a formal meeting provided all members of the District Executive Committee are sent notice of the proposed action or actions and the decision of each member voting is reflected by a document and the action is approved by a majority of those voting thereon.

(j) The District Executive Committee shall designate from among its members a Subcommittee, of which the District President, the District Vice President and the Secretary-Treasurer must be members, and which Subcommittee shall have the right, between meetings of the District Executive Committee to exercise all of the powers, duties and responsibilities of the District Executive Committee.

(k) The District Executive Committee shall have the authority, for reasons con-

sistent with the best interests of the District, to assign to the Branch Agents and elected Patrolmen such duties as it may determine including their temporary transfer of assignment among the Branches, for the efficient and effective administration of the affairs of the District Organization, unless otherwise directed by a majority vote of the membership.

(l) The District Executive Committee shall have the authority, whenever it may determine that it is in the best interest of the membership, to submit to a referendum vote among the membership any issue, policy or action. The vote thereon shall have the same binding effect as a vote by a majority of the membership. Any such referendum shall be conducted in accordance with the procedure outlined in these By-Laws for elections except that the time and duration of the vote and all other pertinent details shall be set by the District Executive Committee.

Section 7. Meeting Chairman

(a) The Branch Agent in each Port, including Headquarters, as the officer in charge of the Branch, shall be the presiding officer of all membership meetings. In his absence, the Patrolman of the Branch, if any, shall serve or if none, the membership at the meeting shall elect their Chairman for the meeting.

(b) He shall keep order under rules of order as provided in the National Constitution.

(c) The Meeting Chairman may cast a vote only in the event of a tie.

(d) The District President shall have the right to act as Chairman of any meeting in any Branch and the District Vice President shall have the right to act as Chairman of any meeting in any Branch in the Gulf area.

Section 8. Committees

(a) Trial Committee
Trial Committee shall conduct trials of persons charged and shall submit findings and recommendations as prescribed in these By-Laws and the National Constitution. It shall be the special obligation of the Trial Committee to observe all the requirements of these By-Laws and the National Constitution with regard to charges and trials and their findings and recommendations must specifically state whether or not, in the opinion of the Trial Committee, the rights of any accused, under these By-Laws and the National Constitution, were properly safeguarded.

(b) Appeals Committee
Appeals Committee shall hear and determine all appeals from trial judgments, in accordance with such procedures as are set forth in these By-Laws and such rules as may be adopted by a majority vote of the membership not inconsistent therewith.

(c) Strike Committee
1. In no event shall a general strike take place unless approved by a majority vote of the membership.

2. In the event a general strike has been approved by the membership, the Branch Agents in all affected Ports shall call a timely special meeting for the purpose of electing a strike committee. This committee shall be composed of three (3) members and their duties shall consist of assisting the Branch Agent to effectuate all strike policies and strategies.

3. The District Executive Committee shall decide when any strike shall begin and shall be charged with the preparation, execution and termination of the strike plan which shall be binding on all members of the District.

4. In no event shall any strike committee obligate this District or any Branch hereof in any manner without the approval of the District Executive Committee.

ARTICLE VII

Wages, Terms of Office of Officers and Other Elective Job Holders, Employees and Others

Section 1. The following elected offices and jobs shall be held for a term of three years: District President, District Vice President, Branch Agent and Patrolmen (when elected).

Section 2. The term of any elective job, other than those indicated in Section 1 of this Article, shall continue for so long as is necessary to complete the functions thereof, unless sooner terminated by a majority vote of the

membership or segment of the District, whichever applies, whose vote was originally necessary to elect the one or ones serving.

Section 3. The compensation to be paid all officers shall be determined, from time to time by the District Executive Committee, unless otherwise directed by a majority of the membership.

Section 4. Paid officials of the District shall devote their full time to their official duties.

Section 5. Unless otherwise ordered by a majority vote of the membership, all other classifications of employees shall be hired or discharged as well as compensated in the discretion of the District President subject to the authority of the District Executive Committee.

Section 6. Unless otherwise ordered by a majority vote of the membership, the District President may contract for, or retain, the services of any person, firm or corporation, not employees of the District, when he deems it necessary in the best interests of the District, subject to the authority of the District Executive Committee.

ARTICLE VIII

Vacancies in Office

Section 1. In the event the District President shall be unable to carry out his duties by reason of death, resignation or removal from office, or any other reason, the District Vice President shall assume the office of District President until the next regular election.

Section 2. In the event a vacancy shall occur simultaneously in the offices of District President and District Vice President, or in the office of District Vice President, the District Executive Committee by majority vote shall name successors from its own membership, who shall fill those vacancies until the next general election.

Section 3. In the event the District Vice President has duly assumed the office of the District President and a vacancy thereafter occurs in his office, the District Executive Committee shall elect a successor from its own membership to fill the vacancy until the next general election.

Section 4. If a vacancy occurs in the office of any other elected officer of the District, the District Executive Committee shall designate a successor, who must otherwise be qualified to fill said office, until the next general election; provided that if any such vacancy or vacancies occur within 18 months following the installation of officers elected at the regular general election, a special election shall be held to fill any such vacancy or vacancies immediately after the expiration of said 18 month period.

Section 5. In the event the National Constitution requires that any such successor must be elected through a referendum vote or membership meeting, such election shall be duly held and the appointee designated by the District Executive Committee shall serve until the successor has been elected and installed in office.

ARTICLE IX

Qualifications for Officers and All Elective Jobs

Section 1. Eligibility requirements for all elective offices of this District requiring a District-wide vote of the membership shall be as provided in the National Constitution.

Section 2. The District Vice President must also be an elected Branch Agent from the Gulf area and may remain in office of District Vice President only so long as he continues as said Branch Agent.

Section 3. Eligibility requirements for other elective jobs not covered by the foregoing Sections shall be membership in good standing.

Section 4. All candidates for and holders of elective offices and jobs, whether elected or appointed in accordance with these By-Laws, shall maintain membership in good standing. Failure to do so shall result in ineligibility to hold such office or jobs and shall constitute an incapacity with regard to such office or job.

ARTICLE X

Elections for District-wide Offices

Section 1. Nominations. Any member may submit his name for nomination for the offices of District President, District Vice President, Branch Agent, Patrolman (where being elected) or Representative to the National Convention by delivery in person or sending by registered mail, a letter addressed to the Credentials Committee in care of the District

President at the address of Headquarters in New York.

The District President is charged with the safe keeping of these letters and shall turn them over to the Credentials Committee upon the latter's request.

The letter shall be dated and contain the following:

(a) The full name of the candidate and, if he wishes, any special name to appear on the ballot.

(b) His home address and mailing address

(c) The number of his last dues receipt and the name of the Branch where he last paid his dues.

(d) The title of the office or other job for which he is a candidate, including the name of the Branch in the event the position sought is that of Branch Agent or Patrolman

(e) Serial number, issue number, date and port issue of his license

(f) Annexing a certificate in the following form, signed and dated by the proposed nominee:

"I hereby certify that I am not now, nor for the five (5) years last past, have I been either a member of the Communist Party or convicted of, or served any part of a prison term resulting from conviction of robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or violation to title II

or III of the Landrum-Griffin Act, or conspiracy to commit any such crimes."

Dated: .....
Signature of Member

Printed forms of the certificate shall be made available to nominees. Where a nominee cannot truthfully execute such a certificate, but in fact, is legally eligible for an office or job by reason of the restoration of civil rights originally revoked by such conviction or a favorable determination by the Board of Parole of the United States Department of Justice, he shall, in lieu of the foregoing certificate, furnish a complete signed statement of the facts of his case together with true copies of the documents supporting his statement.

The letter must reach Headquarters in New York but not prior to the June meeting and no later than the July meeting of the election year.

Section 2. Credentials Committee

(a) A Credentials Committee of three members and two alternates who are in attendance shall be elected at the regular July Meeting held in the Ports of New York, Baltimore, New Orleans, Norfolk and Houston. One member shall be elected at each of the meetings at the New York Branch, Baltimore Branch and New Orleans Branch and one alternate shall be elected at each of the meetings at the Norfolk Branch and Houston Branch.

No officer or candidate for office shall be eligible for election to this Committee. The Committee's results

shall be by majority vote with any tie vote being resolved by a majority vote of the membership at a special meeting called for that purpose at all Branches.

(b) After its election, the Committee shall immediately go into session. It shall determine whether the person has submitted his application correctly and possesses the necessary qualifications. The Committee shall prepare a report listing each applicant under the office or job he is seeking. Each applicant shall be marked "qualified" or "disqualified" according to the findings of the Committee. Where an applicant has been marked "disqualified" the reason therefor must be stated in the report. Where a tie vote has been resolved by a special meeting of the membership, that fact shall also be noted, with sufficient detail. The report shall be signed by all of the Committee members, and be completed and submitted to the Branches in time for the next regular meeting following the election of the Credentials Committee. At this regular meeting, the report shall be read and incorporated in the minutes, and then posted on the bulletin board in each Branch.

(c) When an applicant has been disqualified by the Credentials Committee, he shall be notified immediately by telegram at the address listed by him in his letter of nomination. He shall also be sent a letter containing the reasons for such disqualification by air mail, special delivery, registered, to the same mailing address. A disqualified appli-

cant shall have the right to take an appeal to the membership from the decision of the Committee. He shall forward copies of such appeal to each Branch, where the appeal shall be presented and voted upon at a regular meeting no later than the first regular meeting after the Committee's election. It is the responsibility of the applicant to insure timely delivery of his appeal. In any event, without prejudice to his written appeal, the applicant may appear in person before the Committee within two days after the day on which the telegram is sent, to correct his application or argue for his qualification.

The Committee's report shall be prepared early enough to allow the applicant to appear before it within the time set forth in these By-Laws and still reach the Branches in time for the first regular meeting after its election.

(d) A majority vote of the membership shall, in the case of such appeals, be sufficient to overrule any disqualification classification by the Credentials Committee, in which event the one so previously disqualified shall then be deemed qualified.

Section 3. Balloting Procedure

(a) The District President shall insure the proper and timely preparation of ballots without partiality as to candidates or Branches. The names of the candidates for each separate office or job shall appear in alphabetical order. The names of all candidates shall be numbered in sequence commencing with the first

name under the first office and ending with the last named candidate under the last office. In the case of Branch Agents and Patrolmen, the Branches shall be listed in the following order: New York, New Orleans, and the remaining Branches in alphabetical order.

The ballots may contain voting instructive comments not inconsistent with the provisions of these By-Laws.

(b) The ballots so prepared at the direction of the District President shall be the only official ballots. No others may be used. A sufficient amount shall be printed and distributed. A record of the ballots distributed shall be maintained by the District President.

(c) Ballots must be cast by mail to a predetermined depository as provided in ARTICLE VI, SECTION 1, secured and paid for by the District. Secrecy of the ballots must be assured. No signature of any voter or other distinguishing mark shall appear on the ballot.

(d) No member may vote unless he is in good standing as of 15 days immediately preceding the closing of the balloting.

(e) Voting shall commence on September 1st and shall continue until November 30th inclusive. If September 1st or November 30th fall on a holiday, or a Sunday, balloting shall commence or end, as the case may be, on the next succeeding business day. Ballots not received in the depository when the ballots are collected, as provided in Section 4, shall be disqualified.

(f) A member shall be entitled to write in for a duplicate ballot and receive the same provided he states in his letter that he has not received his ballot or that his ballot has been lost or mutilated so that it can not be used. All duplicate ballots shall be marked either by color or serial number to identify them as such. Duplicate ballots shall be counted unless the original and duplicate ballot mailed to a member are both cast in which event neither ballot shall be counted.

(g) The District President, subject to the approval of the District Executive Committee, shall designate an Impartial Administrator to supervise the conduct of the election. The Duties of such Impartial Administrator shall include: the mailing of the ballots, assuring the secrecy of and non-accessibility to the depository during the election, the mailing of duplicate ballots on written requests from members, supervising the ballot collection, and the tallying procedure with the Tallying Committee and to take such other measures as he may deem necessary to assure a fair and impartial election.

Section 4. Ballot Collection, Tallying Procedure, Protests and Special Votes

(a) A Tallying Committee of five members and three alternates who are in attendance shall be elected at a special meeting held in the Ports of New York, Norfolk, Philadelphia, Houston, Galveston, Baltimore, New Orleans and Boston one week prior to the December meet-

ing of the election year. One member shall be elected at each of the meetings at the New York Branch, Norfolk Branch, Philadelphia Branch, Galveston Branch and Houston Branch, and one alternate shall be elected at each of the meetings at the Baltimore Branch, Boston Branch and New Orleans Branch. No officer or candidate for office shall be eligible for election to this Committee.

The elected Tallying Committee of five men and the Impartial Administrator shall, on the morning of the regular December meeting, proceed to the depository and obtain all the ballots which shall be retained in a sealed or locked container and brought to the New York Headquarters where it shall remain sealed or locked and in the custody of the Tallying Committee and the Impartial Administrator until such time as the container is opened and the ballots are checked and counted.

(b) The Impartial Administrator and the Tallying Committee are charged with the tally of all the ballots and the preparation of a report setting forth in complete detail the results of the election, including a complete accounting of all ballots, and reconciliation of the same with rosters and verification lists of membership. The report shall clearly detail all discrepancies discovered and shall contain recommendations for the treatment of these discrepancies. The Impartial Administrator and all members of the Committee shall sign the report, without prejudice, however, to

the right of any member thereof to submit a dissenting report as to the accuracy of count and the validity of the ballots, with pertinent details.

(c) The Impartial Administrator and the Tallying Committee are also charged with the receipt and evaluation of written protests by any member who claims an illegal denial of the right to vote. If they find the protest invalid, they shall dismiss the protest and so inform the protesting member, by wire, on the day of dismissal. If they find the protest valid, the Impartial Administrator and the Committee shall permit such member on such terms as may be practical to cast his vote. The reports of the Impartial Administrator and this Committee shall include a brief summary of each protest received, the name of the protesting member, and a summary of the disposition of the said protest.

(d) The Impartial Administrator and the Tallying Committee shall commence their work on the day that the ballots are collected and shall complete their work as quickly as possible. The reports of the Impartial Administrator and the Tallying Committee shall be filed no later than 24 hours following the completion of the count.

Each member of the Committee and the Impartial Administrator shall be paid at the rate of pay determined by the District Executive Committee, unless otherwise ordered by a majority vote of the membership. The proceedings of the Committee, except for the

actual preparation of the Report and dissents therefrom, if any, shall be open to any member.

(e) A majority of the membership, at the election report meeting may order a recheck and a recount where a dissenting report has been issued by one or more members of the Tallying Committee.

(f) In the event of a tie vote for office of District President, the District President shall, within 10 days, direct a run off election among the candidates receiving the tie vote; and in the event of a tie vote for any other office, the membership at the next regular meeting shall, by secret ballot, vote on the candidates who received the tie vote. The candidate receiving the highest vote shall be deemed elected.

(g) All reports of the Impartial Administrator, the Tallying Committee and the District President under this Article shall be entered in the minutes of all Branches.

Section 5. Installation into Office

(a) The person elected shall be that person having the largest number of votes cast for the particular office or job involved except that in case of the District Vice President, it shall be the person receiving the largest vote and also has been elected a Branch Agent from a Branch in the Gulf area. Where more than one person is to be elected for a particular office or job, the proper number of candidates receiving the successively

highest number of votes shall be declared elected. It shall be the duty of the District President to notify each individual elected.

(b) The duly elected District President, District Vice President, Branch Agents, Patrolmen, and Representatives to the National Convention shall take over their respective offices and jobs, and assume the duties thereof at midnight December 31st. At that time, the terms of their predecessors shall expire. This shall not apply where the successful candidate cannot assume his office because he is at sea, or any other reason which the District Executive Committee shall determine as just cause, in which event the incumbent shall remain in office until the successful candidate assumes office. If he does not assume office within 90 days, unless such period is extended by the District Executive Committee for just cause, the line of succession shall apply until the expiration of the term. All other cases of failure to assume office shall be dealt with as decided by a majority vote of the membership.

(c) Before assuming office, every officer shall take the following oath:

"I, ...,
do hereby sincerely pledge my honor to perform the duties of my office as prescribed by the National Constitution and the By-Laws of this organization, and to uphold these Constitutions to the best of my ability. I will deliver to my successor in office all books, papers and

other property of this District that may be in my possession at the close of my official term. Further, I do solemnly swear (or affirm) that I am not a member of a Communist Party or any organization which advocates the overthrow of the Government of the United States by force, violence or other subversive or unconstitutional methods, and during my term of office, I will not knowingly aid or support the activities of any such party or organization.

All this I solemnly promise with the full knowledge that to violate this pledge, is to stamp me as a person devoid of principle and destitute of honor."

(d) The District President is specifically charged with the preservation and retention of all election records, including the ballots, as required by law and is directed and authorized to issue such other and further directions as to the election procedures as are required by law, which directives shall be part of the election procedures of this District.

Section 6. Notice to the membership for nominations and elections to be held must be given in accordance with provisions of the National Constitution.

ARTICLE XI

Other Elections

Section 1. Trial Committee. A Trial Committee shall be elected at a regular meeting of the Branch where the trial is to take place. It shall consist of three members, of which

two shall constitute a quorum. No officer or employee may be elected to serve on a Trial Committee. No member who intends to be a witness in the pending trial may serve. It shall be the duty of every member to decline nomination if he knows, or has reason to believe, the foregoing disqualification applies to him. The members of this Committee shall be elected under such generally applicable rules as are adopted by a majority vote of the membership.

Section 2. Other Committees. Unless otherwise specified herein, all Committees shall be elected when and as required.

Section 3. Other Elections. In the event an election shall be held for an elective office other than the regular election, the same procedures and time requirements provided for the regular election shall be adopted.

ARTICLE XII

Code of Trial by Charges

Section 1. The filing of any charges against a member and the holding of a trial thereon shall be governed by the applicable provisions of the National Constitution.

Section 2. The written charges shall be presented to the Branch Agent of the Port nearest the place of the offense or the Port of payoff if the offense took place aboard the vessel. The Branch Agent shall cause the charges to be read at the meeting of the Branch.

Section 3. If the charges are rejected by a majority vote of the Branch, no further action

may be taken thereon unless ruled otherwise by a majority vote of the membership of the Union within 90 days thereafter.

In the event a majority of the membership of the Union shall vote to accept charges after their rejection by a Branch, the trial shall take place in either the New York or New Orleans Headquarters, whichever is closest to the Port where the original vote was taken.

Section 4. The Trial Committee after the hearing shall forward its full report to the Branch Agent of the Port where the trial has taken place.

The Branch Agent shall cause such report to be presented and entered into the minutes at the next regular meeting. In addition, he shall send the record of the entire proceedings to New York Headquarters which shall cause a fair summary to be made. Such summary and the report of the Trial Committee shall be sent to each Branch in time for the next regularly scheduled meeting.

Section 5. A majority vote of the membership shall determine the disposition of the case and the penalty to be imposed if the charged person is held guilty.

In the event a new trial is ordered by a majority vote of the membership, it shall be held at New York or New Orleans Headquarters, whichever is closer to the Port where the original trial was held.

Section 6. An accused who has been found guilty, or is under effective punishment, may appeal in the following manner:

He may send or deliver a notice of appeal to the New York Headquarters within 30 days after receipt of the notice of the decision of the membership.

Section 7. The Appeals Committee shall consist of three elected officials of the District serving in the Headquarters in New York. The Appeals Committee shall consider all available documents used as evidence at the trial, as well as any written statement or argument submitted by the accused. The accused may argue his appeal in person, if he so desires.

Section 8. The Appeals Committee shall decide the appeal as soon as possible, consistent with fair consideration of the evidence and arguments before it. It may grant adjournments and may request the accused or accusers to present arguments whenever necessary for such fair consideration.

Section 9. The decision of the Appeals Committee shall be by majority vote, and shall be in the form of findings and recommendations. Dissents will be allowed. Decisions and dissents shall be in writing and signed by those participating in such decision or dissent. In making its findings and recommendations, the Appeals Committee shall be governed by the following:

(a) No finding of guilt shall be reversed if there is substantial evidence to support such a finding and, in such case, the Appeals Committee shall not make its own findings as to the weight of evidence.

(b) In no event shall increased punishment be recommended.

(c) A new trial shall be recommended if the Appeals Committee finds—(1) that any member of the Trial Committee should have been disqualified, or (2) that the accused was not adequately informed of the details of the charged offense, which resulted in his not having been given a fair trial, or (3) that for any other reason, the accused was not given a fair trial.

(d) If there is not substantial evidence to support a finding of guilt, the Appeals Committee shall recommend that the charge on which the finding was based be dismissed.

(e) The Appeals Committee may recommend lesser punishment.

Section 10. The Appeals Committee shall deliver its decision and dissent, if any, to the New York Headquarters, which shall cause sufficient copies to be published and shall have them sent to each port in time to reach there before the next regular scheduled meeting. The New York Headquarters shall also send a copy to each accused and accuser at their last known address, or notify them in person.

Section 11. At such regular scheduled meeting, the membership, by a majority vote, shall accept the decision of the Appeals Committee, or the dissent therein. If there is no dissent, the decision of the Appeals Committee shall stand.

If a new trial is ordered, it shall be held at New York or New Orleans Headquarters, whichever is closer to the Port where the original trial was held. Any decision so pro-

viding for a new trial shall contain such directions as will insure a fair hearing to the accused.

Section 12. A further appeal may be taken, as provided in the National Constitution.

Section 13. Every accused shall receive a written copy of the charges preferred against him and shall be given a reasonable time to prepare his defense but he may plead guilty and waive any or all of the other rights and privileges granted to him under the National Constitution and accept such penalty as may be imposed by the Trial Committee.

ARTICLE XIII

Bonds

Officers and job holders, whether elected or appointed, as well as all other employees handling monies of the District, shall be bonded as required by law.

ARTICLE XIV

Expenditures

Section 1. In the event no contrary policies or instructions are in existence, the District President may authorize, make or incur such expenditures or expenses as are normally encompassed within the authority conferred upon him by these By-Laws unless otherwise determined by a majority vote of the membership.

Section 2. Checks drawn on bank accounts of the District must be signed by two elected officers, one of whom must be either the District President or the Secretary-Treasurer.

ARTICLE XV

Income

Section 1. The income of this District shall include dues, initiation fees, fines, assessments, loans, interest, dividends as well as income derived from any other legitimate business operation or other legitimate source.

Section 2. An official District receipt, properly filled out, shall be given to anyone paying money to the District or to any person authorized by the District to receive money. It shall be the duty of every person affiliated with the District who makes such payments to demand such receipts.

Section 3. No assessments shall be levied except after a membership referendum ballot conducted under such general rules as may be decided upon by the District Executive Committee unless otherwise directed by a majority vote of the membership, provided that:

(a) The ballot must be secret.

(b) The assessment must be approved by a majority of the valid ballots cast.

Section 4. Except as otherwise provided by law, all payments by members or other affiliates of this District shall be applied successively to the monetary obligations owed to the District commencing with the oldest in point of time, as measured from the date of accrual of such obligation. The period of arrears shall be calculated accordingly.

ARTICLE XVI

Other Types of District Affiliation

To the extent permitted by law and the National Constitution, this District, by decision of the District Executive Committee unless otherwise directed by a majority vote of the membership, may provide for affiliation with it by individuals in a lesser capacity than membership, or in a capacity other than membership. The District Executive Committee, unless otherwise directed by a majority vote of the membership, may provide for the rights and obligations incident to such capacities or affiliations. These rights and obligations may include, but are not limited to (a) the applicability or non-applicability of all or any part of these By-Laws; (b) the terms of such affiliation; (c) the right of the District to peremptory termination of such affiliation and, (d) the fees required for such affiliation. In no event may anyone not a member receive evidence of affiliation equivalent to that of members, receive priority of rights over members, or be termed a member.

ARTICLE XVII

Shipping Rules

Section 1. The formulation of shipping rules shall not be deemed part of any routine administrative task. Shipping rules, governing the details of the assignment of jobs and governing conduct and procedure connected therewith, shall be approved by a referendum vote of the membership. Shipping rules duly issued shall be deemed to be District policy.

Section 2. The District Executive Committee, unless otherwise directed by a majority vote of the membership, may make special exceptions or rules for any company or vessel, for organizational purposes.

ARTICLE XVIII

Quorums

Section 1. Unless elsewhere herein otherwise specifically provided, the quorum for a special meeting of a Branch shall be five (5) members.

Section 2. The quorum for a regular meeting of a Branch shall be seven (7) members.

Section 3. The quorum for the District Executive Committee shall be a majority of those eligible to attend.

Section 4. Unless otherwise specifically set forth herein, the quorum for any committee shall be the majority of those duly elected or appointed thereto.

Section 5. Unless otherwise specifically set forth herein, the decisions, reports, recommendation or other functions of any segment of the District requiring a quorum to act officially, shall be that of the majority of the quorum, and shall not be official or effective unless the quorum requirements are met.

ARTICLE XIX

Meetings

Section 1. Regular membership meetings shall be held monthly in the Branches at the following times:

During the week following the first Sunday of every month a meeting shall be held on Monday—at Norfolk and Galveston; on Tuesday—at Baltimore and Houston; on Wednesday—at Philadelphia and New Orleans; on Thursday—at New York and Tampa; on Friday—at Boston, Jacksonville, Miami and Mobile.

Section 2. All regular membership meetings in the several ports shall commence betwen 1 P.M. and 2:30 P.M. Local Time, as initially fixed by each Branch; and in New York at 7 P.M. Local Time. If such meeting days falls on a Holiday, the meeting shall take place at the same time, the following week day.

In the event no quorum is present at the designated time, the Chairman shall postpone the opening of the meeting until a quorum is present but in no event more than one-half hour later.

Section 3. A special meeting of a Branch may be called only at the direction of the District President or the District Vice President or the Branch Agent of said Port. No special meeting may be held except between the hours of 9 A.M. and 5 P.M. Notice of such meeting shall be posted at least 2 hours in advance on the Branch bulletin board.

Section 4. Notwithstanding anything to the contrary, all regular and special meetings shall be governed by the following:

The National Constitution, these By-Laws and Robert's Rules of Order where applicable.

ARTICLE XX

Definitions

Section 1. Unless otherwise set forth or dealt with herein, the term "incapacity" shall mean any illness or situation preventing the affected person from carrying out his duties for more than 30 days, provided that this does not result in a vacancy. However, nothing contained in this Article shall be deemed to prohibit the execution of the functions of more than one job and/or office in which event no incapacity shall be deemed to exist with regard to the regular job or office of the one taking over the duties and functions of the one incapacitated. The period of incapacity shall be the time during which the circumstances exist.

Section 2. Unless otherwise set forth or dealt with herein, the term "vacancy" and the term "vacancy not caused by an incapacity" shall be deemed to be the same, and shall include failure to perform the functions of any office or job by reason of death, or resignation, or expulsion from the Union, with no further right to appeal, in accordance with the provisions of the National Constitution and these By-Laws.

Section 3. When applicable to the District as a whole, the term "majority vote of the membership" shall mean the majority of all the valid votes cast by members at an official meeting of those Branches holding a meeting. This definition shall prevail, notwithstanding that one or more Branches cannot hold meetings because of no quorum. Unless otherwise specified herein, the term "meeting" shall refer to a meeting or meetings during the time

period within which a vote must be taken, in accordance with:

(a) The Constitution and By-Laws

(b) District Policy, and

(c) Custom and usage of the District, in the indicated priority.

Section 4. When applicable solely to Branch action and not concerned with, or related to District action as a whole, and not forming part of a District-wide vote, the term "majority vote of the membership" shall refer to the majority of the valid votes cast by the members at any meeting of the Branch, regular or special.

When applicable to the Executive Board, "majority vote" or "majority vote of the Executive Board" shall mean a majority of the votes actually cast.

Section 5. The term "membership action" shall mean the same as the term "majority vote of the membership."

Section 6. Where the title of any office or job, or the holder thereof, is set forth in these By-Laws, all references thereto and the provisions concerned therewith shall be deemed to be equally applicable to whomever is duly acting in such office or job.

Section 7. The "Election Year" shall be deemed to mean that calendar year prior to the calendar year in which elected officials and other elected jobholders are required to assume office. The first election year shall be deemed to be 1963.

Section 8. The term "member in good standing" shall mean a member not in arrears or under suspension or sentence of expulsion. Unless otherwise expressly indicated, the term "member" shall mean a member in good standing.

Section 9. The term "membership book" shall mean any official certificate issued as evidence of Union membership.

Section 10. The term "Headquarters", unless otherwise indicated shall mean the offices in New York and New Orleans.

Section 11. The term "National Constitution" shall mean the National Constitution of the National MEBA.

The term "By-Laws" shall mean the By-Laws of this District.

ARTICLE XXI

Amendments

These By-Laws may be amended in the following manner:

(a) The District Executive Committee may propose and submit to the membership proposed amendments which if approved by a majority vote of the membership shall be deemed adopted.

(b) Any member may submit, at any meeting of any Branch, proposed amendments to these By-Laws in resolution form. If a majority vote of the membership of the Branch approves it, the proposed amendment shall be forwarded to all Branches for further action.

When a proposed amendment is accepted by a majority vote of the membership, it shall be referred to New York Headquarters. A Constitutional Committee composed of five members shall be elected in accordance with such rules as are established by the District Executive Committee. The Committee will act on all proposed amendments referred to it. The Committee may receive whatever advice and assistance, legal or otherwise, it deems necessary. It shall prepare a report on the the amendment, together with any proposed changes, substitutions or recommendations, and the reasons for such recommendations. The latter shall then be submitted to the membership by the District President. If a majority vote of the membership approves the amendment as recommended, it shall then be voted upon, in a yes or no vote, by the membership of the District by secret ballot, in accordance with the procedure outlined for elections, except that the time and duration of the vote shall be set by a majority vote of the membership. The amendment shall either be printed on the ballot or, if too lengthy, shall be referred to on the ballot. Copies of the amendment shall be posted on the bulletin boards of all Branches.

If approved by a majority of the valid ballots cast, the amendment shall become effective immediately upon notification, by the Tallying Committee, to the District President that the amendment has been so approved, unless otherwise specified in the amendment. The District President shall immediately notify all Branches of the results of the vote on the amendment.

ARTICLE XXII

Transition Clause and Effective Date

Section 1. It is the purpose and intent of these By-Laws to provide for an orderly transition from the operations and activities of the Subordinate Associations of the Atlantic and Gulf Districts as governed by their respective By-Laws to the operations and activities of the new District conducted in accordance with these By-Laws.

Section 2. The District Executive Committee shall have full power and authority to make such decisions and interpretations which in its discretion may be necessary to accomplish such orderly transition.

Section 3. The effective date of this organization and of these By-Laws shall be January 1, 1961.

Amended September, 1962,
by Referendum Ballot.

[fol. 59]

EXHIBIT "B" TO AFFIDAVIT OF JESSE M. CALHOON

CONSTITUTION OF NATIONAL MARINE ENGINEERS BENEFICIAL ASS'N.

(As Amended by the 85th National Convention, May 1962).

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ARTICLE X

Districts and Subordinate Associations

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Section 9. Eligibility for Office in Districts. Any person may hold elective office in a District, who (1) has been a member in good standing at all times for twenty-four consecutive months immediately preceding nomination in said District or from the date of issuance of the Charter to the District, if such District has not been in existence for two years, and (2) is not employed or acting as salesman of any commodity of any character whatsoever, whether as agent or representative of any firm or firms in the marine field, provided, however, that (3) no member who is a member of, or supports an organization that favors a totalitarian form of government, or who is a member of or supports an organization which advocates the overthrow of the Government of the United States by force or violence may hold elective, or appointive office in any District.

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[fol. 60]

EXHIBIT "C" TO AFFIDAVIT OF JESSE M. CALHOON

CONSTITUTION OF NATIONAL MARINE ENGINEERS BENEFICIAL ASS'N

(As Amended by the 86th National Convention, March, 1963)

PREAMBLE

We, the members of the National Marine Engineers' Beneficial Association of the United States of America, believe in the United States as a government of the people, by the people and for the people whose just powers are derived from the consent of the governed; a democracy in a republic, a sovereign nation of many sovereign states, a perfect Union, one and inseparable, established upon those principles of freedom, equality, justice and humanity for which American patriots sacrificed their lives.

We, therefore, believe it is our duty to our country to love it, to support its Constitution, to obey its laws to respect its flag and to defend it against all enemies.

ARTICLE I

Name and Composition

This Association shall be known as the National Marine Engineers' Beneficial Association, A.F.L.-C.I.O., hereinafter referred to as the "National Association."

ARTICLE II

Objects and Jurisdiction

Section 1. The objects and purposes of this Association shall be to elevate and maintain the rights and advance and safeguard the economic and working conditions of marine engineers under its jurisdiction and otherwise labor for their better protection and advancement.

Section 2. The jurisdiction rights of the National Association shall extend to all vessels, boats, barges, scows, or any other craft flying the American flag, the Canadian flag, or to any vessel regardless of flag, where such vessel is owned, operated or controlled by American interests propelled by steam, gas, oil, electricity or machinery of any kind.

ARTICLE III

Eligibility for Membership

Section 2. The jurisdictional rights of the National Asso-

moral character and known qualifications who are citizens of the United States shall be eligible for full book membership after having completed the requirements for probationary membership.

(a) All marine engineers who have been licensed by the Bureau of Marine Inspection, U. S. Coast Guard, to serve as such on vessels of the United States.

(b) Marine engineers regularly serving on Commercial Motor vessels operating in inland waters where license requirements have not been established by the Bureau of Marine Inspection and Navigation.

(c) Any engineer whose United States marine license is valid, though he engage in another vocation, is eligible for membership.

(d) Persons holding an operator's certificate, or having actually been employed as an engineer on Diesel craft and having known qualifications as a Diesel engineer shall be eligible to membership in the National Association.

Section 2. Marine engineers of good moral character and known qualifications who are nationals of Canada will be eligible for membership in the National Marine Engineers' Beneficial Association, providing that such Engineers are licensed or certificated Marine Engineers under the laws of Canada. Marine Engineers who are nationals of other countries and working on vessels regardless of Flag, owned, operated or controlled by American interests, shall also be eligible for membership.

For the purpose of determining the character and qualifications of applicants for membership, applicants may be required to assume a probationary status, for an indefinite period of time in accordance with Rules for probationary members, which Rules shall be promulgated by the National Executive Committee.

Section 3. The National Executive Committee may promulgate rules and regulations with respect to the conditions upon which (a) any applicant for membership who is also a member of an unlicensed seafaring union will be accepted into membership and (b) any member who is also a member of an unlicensed seafaring union may continue such membership or be compelled to discontinue the same.

Any engineer engaged in a deliberate infiltration into non-contract companies for the purpose of organizing, who has to join another organization for this purpose, and who has written letter of instruction, signed by the proper person, with due authority, shall not be subject to charges of dual Unionism.

Section 4. All Districts shall be limited with regards to the number of applicants who may be taken in, in the course of a fiscal year. There shall be established a quota which will permit a District to take into membership in each fiscal year as either new members, members reinstating membership, or members depositing withdrawal cards, an amount not to exceed a total of two percent of the total membership of the District in question as reported in the current annual report for the particular year to the National Association.

Where there may be applicants in excess of the quota, membership shall be regulated by the date on which full payment of the necessary fees are completed.

At the request of a District, the National Executive Committee may within its discretion suspend the quota regulations for one or more Districts for the purpose of organizing or in such cases as it may determine to be necessary.

ARTICLE IV

National Association Officers

Section 1. The officers of the National Association shall consist of a President and Secretary-Treasurer and three National Executive Vice Presidents.

Section 2. At each convention of this National Association the President in office shall appoint a Chaplain, Doorkeeper, Conductor and such other appointive officers as this National Association may require, whose term of office shall expire with the closing of the convention.

National Administrative Committee

Section 3. There shall be established in the National office, a National Administrative Committee consisting of the National President, National Secretary-Treasurer and three Executive Vice-Presidents.

ARTICLE V

Nomination and Election of National Officers

Section 1. The National officers, other than the National Executive Vice Presidents, shall be elected every 5 years commencing with the election in 1963. This election shall be by referendum vote and secret ballot.

Section 2. The National officers, other than the National Executive Vice Presidents, shall be elected by plurality vote of the general membership in good standing who shall vote in each election.

Each of the Presidents of District 1, District 2 and the Pacific Coast District shall, by virtue of their election as District President, be deemed elected as a National Executive Vice President, and the ballot for election of District President shall so provide.

In the event the District President of any such District is also a National officer, the District Executive Committee of such District shall designate the individual who shall serve as a member of the National Administrative Committee until the next regular National Convention at which time the Convention shall elect an additional National Ex-

ecutive Vice President. The individual so designated, while serving as a member of the National Administrative Committee, must be a member of the National Executive Committee.

Section 3. Any member shall be eligible for nomination to and election as a National officer provided (a) he is at the time of nomination and election a member in good standing; and (b) he has been a member of the National Association or of any other organization which has duly affiliated with the National Association, for 5 years immediately preceding the date of the closing of nominations; and (c) he has previously served as a full time, paid elected official of the National Association or of a Subordinate Association. No member can accept nomination to or be a candidate for more than one office in any National election.

No member shall, while serving in office, be receiving a pension under any MEBA Pension Plan.

No member of the National Association may hold any National office or be appointed on a National Committee who was a member of, or supports an organization which favors a totalitarian form of government or who is a member of, or supports an organization which advocates the overthrow of the Government of the United States by force or violence or is disqualified by law.

Section 4. Any member may submit his name for nomination for any National office by delivering in person or sending by registered or certified mail, a letter addressed to the National Balloting Committee, in care of the National President at the address of the National Headquarters of the National Association, making such nomination.

The National President is charged with the safekeeping of these letters and shall turn them over to the National Balloting Committee upon the latter's request.

The letter shall be dated and contain the following information:

(a) The full name of the candidate and, if he wishes, any special name to appear on the ballot;

(b) His home address and mailing address;

(c) The number of his last dues receipt and the name of the Branch or District Headquarters where he last paid his dues;

(d) The title of the national office for which he is a candidate;

(e) Serial number, issue number, date and port issue of his license;

(f) Unlicensed union or unions to which nominee belonged and approximate date of joining the same;

(g) Date of joining the MEBA and the Subordinate Associations or other affiliated body in which he has been a member; and

(h) Annexing a certificate in the following form, signed and dated by the proposed nominee:

"I hereby certify that I am not now, nor for the five (5) years last past, have I been either a member of the Communist Party or convicted of, or, served any part of a prison term resulting from conviction of robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or violation of Title II or III of the Landrum-Griffith Act or conspiracy to commit any such crimes.

Dated Signature of Member.

Printed forms of the certificate shall be made available to nominees. Where a nominee cannot truthfully execute such a certificate, but in fact is legally eligible for an office or job by reason of the restoration of civil rights originally revoked by such conviction or a favorable determination by the Board of Parole of the United States Department of Justice, he shall, in lieu of the foregoing certificate, furnish a complete signed statement of the facts of his case together with true copies of the documents supporting his statement.

The letter of nomination with the foregoing data must reach the National Headquarters not earlier than April 15 and no later than May 15 of the election year.

Notice of this opportunity for nominations shall be given to the members by April 1, which can be through the mailing of the official American Marine Engineer to the members.

Section 5. Immediately following the close of nominations on May 15 (if said date be a Saturday or Sunday, then on the Monday immediately following) the National Balloting Committee shall meet at National Headquarters. It shall determine whether the member or members have submitted their applications in due form and whether they possess the necessary qualifications. The Committee shall prepare a report listing each applicant under the position he is seeking. Each applicant shall be marked "qualified" or "disqualified" according to the findings of the Committee. Where an applicant has been marked "disqualified" the reason therefore must be stated in the report.

The report shall be signed by all the Committee members and be completed no later than one week after the close of nominations.

When an applicant has been disqualified by the Committee, he shall be notified immediately by telegram at the address listed by him in his letter of nomination. He shall also be sent a letter containing the reasons for such disqualification by air mail, special delivery, registered to the same mailing address. A disqualified applicant shall have the right to take an appeal to the National Executive Committee from the decision of the National Balloting Committee. The applicant must, however, forward his appeal to the National Headquarters within one week after the mailing of the notice of his disqualification to him by the National Balloting Committee. The National Headquarters shall distribute to the National Executive Committee the report of the National Balloting Committee and the appeal of the applicant. The decision of the National Executive Committee should be given as quickly as possible and such decision shall be final.

Section 6. Upon receipt of the report of the National Balloting Committee and the final disposition of any appeals from disqualified applicants, the Impartial Balloting Agency, which shall be designated by the National Execu-

tive Committee, under the supervision of the National President shall prepare the official ballot and shall mail one such ballot to each member of the National Association. All ballots shall be mailed not later than the thirtieth day following the close of nominations. The Chief Executive Officer of each District and the National office where applicable shall furnish the impartial balloting agency a list of its members who have not been expelled, suspended or dropped.

Section 7. The ballot shall be enclosed in envelope which shall have the following form printed thereon: I, ... a member in good standing of the MEBA District No. ..... desire my vote recorded as per ballot enclosed.

This envelope, with ballot enclosed, shall be enclosed in an outer envelope addressed to the National Marine Engineers' Beneficial Association, care of a Safe Deposit Vault or US Post Office Box which shall be located in the city in which headquarters of the National Association is located. All ballots returned for lack of proper address shall be returned to the same Safe Deposit Vault or US Post Office Box.

Section 8. The impartial balloting agency shall be responsible for making all arrangements for such Safe Deposit Vault or US Post Office Box. All such arrangements shall be subject to the approval of the National Executive Committee. The impartial balloting agency shall retain in its possession the keys to the locked and sealed ballot box until the official closing of the ballot.

Section 9. The National Ballot shall be officially closed ninety (90) days after the mailing of the ballots in accordance with section 6 of this Article. All ballots not received in the depository when the ballots are collected as provided herein shall be disqualified.

Section 10. At each National Convention immediately preceding an election for National office, the representatives at the Conventions shall elect a National Balloting Committee of three members from among the representatives at such Convention. No representative who is a candi-

date for National office at the forthcoming referendum election shall be eligible to be a member of the National Balloting Committee. The members of the Balloting Committee shall choose their Chairman.

Members of the Official National Balloting Committee [fol. 60a] and the impartial balloting agency shall be empowered with an order, executed by the National Association and signed by the National President and National Secretary-Treasurer and under the seal of the National Association, to proceed following the close of the balloting to the Safe Deposit Vault or US Post Office Box. Upon presenting the duly executed order to the Custodian of the Safe Deposit Vault or US Post Office Box, said Custodian shall deliver all ballots which have been cast for officers of the National Association.

Section 11. The official National Balloting Committee together with the impartial balloting agency shall then proceed to count the ballots. Candidates receiving the highest number of votes for each office shall be declared elected.

In checking all ~~ballots,~~ the Balloting Committee shall use the lists of members in good standing which shall be furnished to them by the National Secretary-Treasurer.

The Chief Executive Officer of each District shall provide the National Secretary-Treasurer, not later than five days prior to the closing of the ballot, the names of the members in good standing as of the date ten days prior to the closing of the balloting, as provided in Section 9 hereof.

Section 12. After all ballots have been counted and the results tabulated, the National Balloting Committee shall replace all ballots in the boxes or other receptacles. The Chairman of the Committee shall lock and seal the ballot boxes or other receptacles.

Section 13. The balloting Committee and the impartial balloting agency shall prepare and mail within twenty-four hours following completion of the count a notarized report signed by the members of the Committee and the Representative in charge of the impartial balloting agency which shall tabulate the following information:

1. The total number of valid, void and blank ballots cast;

2. The number of votes cast for each Candidate who shall have been nominated in accordance with the provisions of this Constitution;

3. The votes cast by members of each District for each Candidate.

Such report shall be sent to each District to the National office and to each of the candidates.

The ballot box and its contents shall then remain in the custody of the National Balloting Committee for thirty days. After the expiration of thirty days if no recount is demanded by any of the candidates, the ballot box and its contents shall be turned over to the National Secretary-Treasurer who shall preserve the same for one year when it may be destroyed.

Section 14. If any candidate demands a recount of the ballots before the expiration of the thirty day period, the National Executive Committee shall be empowered to make necessary arrangements for a recount and report the result to all Districts of the National Association.

Section 15—The elected officers of the National Association shall be installed in their respective offices by any member of the National Executive Committee after the expiration of the thirty day period during which a demand for a recount may be made and shall assume the duties of their offices immediately thereafter.

Section 16. The regularly appointed members of the National Balloting Committee shall have their expenses, including transportation expense to the National headquarters, paid by the National Association as contracted by the National President.

Section 17. The impartial balloting agency shall stand ready at all times to mail out duplicate ballots to individuals —and the ballots shall be so marked, who shall notify them through their respective Districts that they have not received ballots. It shall be the duty of the Districts to forward corrected addresses to the impartial balloting agency and adequate precautions shall be taken at the tabulation

to prevent the counting of more than one ballot for each member.

Section 18. All referendums emanating from the National Office, the National Executive Committee, or the Convention shall be handled by the impartial balloting agency under the direction of the National Executive Committee and in conformity with this Constitution or the instructions of the National Convention.

Any referendum vote of the membership shall be effective as soon as it is passed, and cannot be eliminated, reversed, over-ruled, or amended unless such shall be done by another referendum vote. Neither the National Executive Committee nor the Convention shall have the authority to alter in any way any action taken as a result of a referendum vote of the membership.

Section 19. Any changes in the national election procedures consistent with the rules and regulations of the impartial balloting agency and approved by the National Executive Committee are hereby authorized.

Section 20. Neither the National Office, a District nor any branch thereof, shall have or retain as an employee or agent any person who is not a member of the M.E.B.A. and who is a relative, wife or blood relative of any elected or appointed official of that District or National Office. This provision shall be effective August 19, 1952 and shall apply to only those Districts having over 100 members.

ARTICLE VI

Duties of National Officers

Section 1. National President

(a) The National President shall be the chief executive officer of the National Association and shall devote his entire time to the work and interests of the National Association. He shall, subject to the authority of the National Executive Committee and the National Administrative Committee, direct manage, and supervise the affairs of the National Association between National Conventions and between sessions of the National Executive Committee. He

shall preside at all National Conventions and meetings of the National Executive Committee.

(b) The National President shall furnish a fidelity bond at the expense of the National Association, which bond shall be executed by a reliable Surety Company and be in the minimum amount of $20,000.00, or such higher figure as may be prescribed by the National Executive Committee. The fact that this bond has been executed and is on deposit in the National Office shall be certified to by the certified public accountant in his annual report. Said bond, as to amount and content, must, however, fulfill the requirements of any applicable law.

(c) The National President shall receive a salary of $17,887.20 per annum; provided the National Executive Committee shall have the authority to make necessary adjustments, in its discretion, in accordance with changes made in the standard collective bargaining agreements. Said compensation shall be paid in semi-monthly installments effective upon being installed in office. He shall receive all legitimate expenses incurred in the performance of the duties of his office, and shall be entitled to an annual vacation to be fixed by the National Executive Committee within the framework of the prevailing collective bargaining agreements pertaining to members of the National Association covering vessels in the offshore trade.

Section 2. National Secretary-Treasurer

(a) The National Secretary-Treasurer, subject to the supervision of the National President, and the National Executive Committee, shall be charged with the responsibility of keeping the minutes of all National Executive Committee meetings and with the maintenance and protection of all records, books, papers and contracts, including financial reports, of the National Association. He shall receive, hold and keep a proper account of all monies of the National Association and pay all legitimate bills.

(b) He shall render a quarterly statement of the accounts to the National Executive Committee, which quarterly statement shall consist of an audit by an independent,

certified public accountant. Such quarterly statement shall include a report of the financial standing of each District with the National Association.

(c) He shall make an annual report to the National Convention, certified by an independent certified public accountant, indicating all receipts and disbursements made during the preceding fiscal year. The books shall be closed on April 1st of each year for the purpose of rendering said annual audited report. Such annual report shall also indicate the Districts which have neglected to render proper returns of their elections, members, dues and such general facts as to the state of the Districts as may be required.

(d) He shall issue a monthly report to the Districts giving changes of Membership that have been reported to him officially and shall receive and answer all correspondence pertaining to his office.

(e) He shall furnish a fidelity bond at the expense of the National Association, which bond shall be executed by a reliable Surety Company and shall be in the minimum amount of $20,000.00, or any greater amount as may be prescribed by the National Executive Committee. The fact that this bond has been executed and is on deposit in the National Office shall be certified to by the certified public accountant in his annual report. Said bond, as to amount and content must, however, fulfill the requirements of any applicable law.

(f) Subject to his responsibility to discharge his specific duties as contained herein, he shall perform such other duties as may be directed by the National Executive Committee or the National Administrative Committee.

(g) The National Secretary-Treasurer shall receive salary of $14,412.24 per annum; provided the National Executive Committee shall have the authority to make necessary adjustments, in its discretion in accordance with changes made in the standard collective bargaining agreements. Said compensation shall be paid in semi-monthly installments effective upon being installed in office. He shall receive all legitimate expenses incurred in the per-

formance of the duties of his office and shall be entitled to an annual vacation to be fixed by the National Executive Committee within the framework of the prevailing collective bargaining agreements pertaining to members of the National Association covering vessels in the offshore trade.

(h) The National Secretary-Treasurer shall serve as a member of the National Executive Committee with a full voice and vote.

(i) The National Secretary-Treasurer, in the absence of the National President, shall preside at the National Conventions or at any meeting of the National Executive Committee or National Administrative Committee.

Section 3. National Vice-Presidents

(a) It shall be the duty of the National Executive Vice-Presidents to assist the President in the discharge of his duties and to discharge all other legitimate duties when ordered by the National Convention, National President or National Executive Committee. The National Executive Vice-Presidents shall receive no salary but shall be reimbursed for legitimate expenses incurred in performance of their duties.

(b) In the case of a vacancy in the office of an Executive Vice-President for any reason whatsoever, including the discontinuance of any incumbent Executive Vice-President as a full time paid elected official of a District, said office shall be filled for the unexpired term by the National Executive Committee.

Section 4. Signatures on Checks

All checks issued by the National Secretary-Treasurer on the funds of the National Association shall bear the signature of the National President and shall be counter-signed by the National Secretary-Treasurer; and, in the absence of either, the second signature may be that of any member of the National Executive Committee authorized by the National Executive Committee to counter-sign checks.

Section 5. Organizing Department

(a) There shall be established, in the National Office, the Organizing Department.

(b) Such Department shall be under the direct supervision of the National Office and the National Executive Committee. It shall be the primary responsibility of this Department and its assigned personnel to organize the unorganized eligible for membership in the National Association and to perform such other duties as may be directed by the National Office and the National Executive Committee.

(c) Such Department shall be adequately staffed with organizers to perform the organizing programs approved by the National Executive Committee or the National Convention. The employment of individual organizers shall be subject to the prior approval of the National Executive Committee.

Section 6. Welfare, Pension, and Vacation Plans

(a) It shall be the responsibility of the National Office to keep fully apprised of the operation and administration of the several Welfare, Pension, and Vacation Plans covering the membership of the organization.

(b) It shall be the national policy of the National Association:

(1) To assure full and equal rights among the membership within such Welfare, Pension and Vacation Plans, and

(2) Wherever it may be practical to do so, achieve the integration of similar Plans among the several districts.

Section 7. National Headquarters

(a) Headquarters of the National Association shall be New York, New York.

(b) The National Executive Committee, may, at its discretion, relocate or reassign either of the full time National officers to any location deemed to serve the best interests of the membership. All legitimate expenses incurred by either

of the full time National officers while away from the city where assigned in the performance of the duties of his office shall be paid.

Section 8. Matters of National Policy

Full and effective enforcement of collective bargaining agreements executed by the National Association or a District and of Shipping Rules duly promulgated by any District in accordance with the provisions of this Constitution, shall be deemed to be a matter of national policy.

Section 9. Rights of Succession to Offices of National President and National Secretary-Treasurer

In the case of a vacancy in the office of the National President, for any reason whatsoever, including death, resignation, or removal, the incumbent National Secretary-Treasurer shall assume said office of the National President for the unexpired term.

In such event and in the case of a vacancy in the office of the National Secretary-Treasurer for any other reason including death, resignation or removal, the National Executive Committee shall then elect a successor who will serve in said office until the regular National Convention which shall elect a successor for the unexpired term. Any such successor must meet the qualifications for said office.

Section 10. National Administrative Committee. The National Administrative Committee, subject to the authority of the National Executive Committee shall be responsible for the performance of the duties vested in the National office by the National Constitution and those assigned from time to time by the National Executive Committee. The National Administrative Committee may assign to any of its members specific tasks incident to the performance of any of its duties.

ARTICLE VII

National Executive Committee

Section 1. Election of National Executive Committee. The National Convention shall elect a National Executive

Committee of ten (10) members and three (3) alternates who must be full time paid elected officials of a District. Four of such members and two alternates shall be from the Atlantic and Gulf area, three of such members and one alternate shall be from the Great Lakes and Rivers area, and three of such members and one alternate shall be from the Pacific Coast area. Each such member shall hold office only so long as he continues to be a full time paid elected official of the District. Any vacancy which may occur in [fol. 60b] the office of a National Executive Committee member for any reason whatsoever between National Conventions shall be filled by the duly elected alternate from the appropriate area. Any subsequent vacancy for which there is no alternate shall be filled by the remaining members of the National Executive Committee providing that the basic allocation among the three areas shall be preserved and the new members as designated shall be otherwise qualified as above provided.

Section 2. Duties of National Executive Committee. The National Executive Committee shall enforce this Constitution and Carry out the instructions of the Conventions, and between Conventions shall have the power to direct the policy and business of the National Association. They shall direct the National officers in the performance of their respective duties. They shall also consider and take appropriate action on any appeals made by any District or any member from any action of a District or the National office. Its decision may be appealed to the following National Convention, but it shall be deemed final pending the appeal and shall remain in effect unless reversed by the National Convention.

Meetings of the National Executive Committee shall be held not less than once every four months at a place designated by the previous meetings of the National Executive Committee. The date of such meeting shall be at the discretion of the National office. Meetings may be held at other times subject to the call of the National office or by petition of five (5) Executive Committee members. Such emergency meetings if called shall be at a place designated

by the National office. All meetings of the National Executive Committee shall be presided over by the National President. The National Secretary-Treasurer shall serve as a member, ex officio, of the National Executive Committee with a full voice and vote.

Section 3. Voting Power in National Executive Committee. Each member of the National Executive Committee shall have one vote.

With respect to any reference contained in this Constitution to a minimum required vote of the members of the National Executive Committee, it shall be understood that such required percentage vote shall be based upon the number of members of the National Executive Committee who actually vote on the specific question. Members of the National Executive Committee who may not be present or refrain from voting shall not be included in the computation for the purpose of determining whether the minimum required percentage vote has been obtained.

Section 4. Quorums. A quorum shall consist of not less than 5 members.

Section 5. Expenses. All expenses incurred in connection with the functioning of the National Executive Committee shall be paid by the National Association.

ARTICLE VIII

Districts

Section 1. There is hereby established within the National Association:

(a) District No. 1: To take the place of and be substituted for and have the same territorial jurisdiction as previously covered by Subordinate Associations No. 59, 33, 13, 5, 11, 15, 16, 10, 14, 12, 40, and 99, but shall not include the territorial jurisdiction of District No. 96.

(b) District No. 2: To take the place of and be substituted for and have the same territorial jurisdiction as previously covered by Subordinate Associations No. 6, 18, 25, 30 and 101.

(c) Pacific Coast District: To take the place of and be substituted for and have the same territorial jurisdiction as previously covered by Subordinate Associations No. 38, 41, 79, 97 and 100.

Section 2. Charters to each of said Districts shall be issued when application is made therefor to the National Association by the Chief Executive Officer of said District. When a charter is so issued, then the charters previously issued to the Subordinate Associations within said District shall be terminated, forfeited and dissolved and deemed fully surrendered.

Section 3. The members of each of the Subordinate Associations within the District shall become members of the District with full rights and privileges of membership.

Section 4. Each District shall possess and exercise all the powers and duties of the previously chartered Subordinate Associations within the District conferred by this Constitution.

Section 5. Each District shall have the authority to promulgate and amend from time to time its Bylaws and Shipping Rules subject to the approval of the National Executive Committee for the administration of its affairs and activities. Such Bylaws shall set forth the specific offices which shall be filled by election on a District-wide basis, the manner in which said elections shall be conducted and the respective duties of such offices.

Section 6. Each District shall be governed by a District Executive Committee which shall be composed of the District-wide elected officials as provided in Section 5; provided, however, that pending the initial District-wide election, the membership of the District Executive Committee shall consist of previously elected full-time paid officials of the Subordinate Associations within the District and any National Officer if so desired by the District, the number and voting power of said members of the District Executive Committee to be provided for in the Bylaws of the District and the District Executive Committee shall have the power to designate its officers and to assign their duties.

Section 7. All full-time and paid officials of the Subordinate Associations within the Districts elected in the 1960 local elections shall become officials of the District for the term of their office. The Bylaws of the District may provide that the District Executive Committee may assign any of said officials to such duties as it may determine for the efficient and effective administration of the affairs of the District.

Section 8. Within each District one port shall be designated as the District headquarters. The District shall have the power to determine, in its discretion, in what other ports within its jurisdiction, it desires to maintain offices which shall be known as Branches.

Section 9. The property, assets, funds and liabilities of each Subordinate Association (including any group life policy or death benefit program) within each District shall not be affected in any manner whatsoever by virtue of the formation and chartering of the separate District. The membership of each such previously chartered Subordinate Association shall determine by a referendum vote among its own members, fixed as of the date of the formation of the applicable District, as to the disposition of the property, assets and funds (including any group life policy or death benefit program) of said Subordinate Association.

Section 10. Each District shall, in addition to such other powers and duties which it may exercise under and pursuant to the Constitution, have the authority to work out uniform policies in the matter of contract enforcement, to negotiate and consummate, enforce and administer all collective bargaining agreements covering the District or any portion thereof, to nominate the Union Trustees for any Pension, Welfare or Vacation Plan established under and pursuant to any such collective bargaining agreement and to determine the policies for the guidance of the Union Trustees. All collective bargaining agreements held by any Subordinate Association within a District shall be transferred to the District.

Section 11. With the formation of the District, all dues, initiation fees and other indebtedness due and owing from its members shall be paid to the District.

ARTICLE IX

National Conventions

Section 1. Time and Place. The regular Convention of the National Association shall be held on the third Monday in March of each year. The National Executive Committee at its regular meeting preceding the date of the Convention shall determine the place of the Convention.

Section 2. Duties. The National Convention shall be the governing body of this National Association and shall have the power, subject to Section 8 of this Article, to amend or repeal any Article or Section of this Constitution.

Section 3. Representation. The duly elected representative, or representatives for the National Convention, of each District, which is in good standing as of the opening date of the National Convention, shall be entitled to one vote for the first 50 members or less, one vote for the next 150 members or less, and one vote for each additional 100 members or less. A representative of a District, which sends only one representative, shall cast the entire vote of the Districts, which send more than one representative to the National Convention may empower one representative to cast the entire vote of the District or divide the votes equally among its Representatives.

Section 4. Eligibility of Representatives. All members eligible for election to office in the District shall be eligible for election as representatives to a National Convention. Qualified representatives to any Convention must be elected in same manner as prescribed in the Constitution and By-laws of their Districts. Failure to qualify under the above conditions shall be sufficient reason for denial of such member to be seated at any National Convention.

Section 5. Quorum. Two-thirds of the representatives present at a National Convention shall constitute a quorum.

Section 6. Visitors. All members in good standing shall be entitled to seats at a National Convention as visitors, but shall have no vote nor voice in the proceedings.

Section 7. All proceedings of Conventions of the National Association and all documents relative thereto shall be published annually in an unabridged form, when so ordered, by the National Convention.

Section 8. Amendments to this Constitution and Referendums.

(a) This constitution may be amended by a two-thirds vote in any Convention of the National Association. Proposed amendments must be submitted by resolution in accordance with the rules governing the proceedings of the Convention.

(b) Resolutions properly submitted to a National Convention, which propose amendments to the National Constitution may specify therein that the subject matter shall be submitted to a referendum vote among the members. In such case, if the resolution is approved by a sixty percent vote at the National Convention, it shall be submitted to a referendum vote and if approved by 60% of the members voting shall go into effect.

(c) A referendum among the membership on any matter which does not amend this Constitution may be authorized by a majority vote at a National Convention or a majority vote of the National Executive Committee. The matter submitted shall go into effect if approved by a majority vote of the members voting.

(d) Any amendment to the National Convention adopted by a referendum among the membership subsequent to the May, 1959 National Convention may not be deleted, altered or amended in any way whatsoever other than through another referendum vote authorized and conducted in accordance with the foregoing provisions.

Section 9. Rules of Order

RULE 1. The President will state plainly every question coming before the National Association, and before putting

it to vote, shall ask, "Are you ready for the question?" and should no delegate rise to speak on the question, the Chair shall rise and take the vote, and after he has risen no member shall be allowed to speak on it unless by consent of the President, who shall announce his decision on all votes and on all subjects. His decision on questions of order shall be without debate, unless entertaining doubts upon the point, when his decision may be appealed to the Representatives of the Convention and decided by a two-thirds vote.

RULE 2. When a Representative speaks, he shall rise and address the President, confining himself strictly to the merits of the question at issue. He shall not be interrupted while speaking, except to explain, without permission of the Representative present. When two or more Representatives arise at once, the presiding officer shall decide who is entitled to the floor.

RULE 3. All resolutions shall be presented in writing to the National Office ten days prior to the convening of the Convention. Each Resolution shall bear the Seal of the Subordinate Association, or District as the case may be. Additional Resolutions may be presented at the Convention if permitted by a ⅔ vote of the Representatives. A copy of each Resolution shall be available for the members of the appropriate Committee at its initial meeting.

RULE 4. A motion to reconsider any former resolution or vote can only be made and seconded by Representatives who vote in the majority. All motions and resolutions relating to a reconsideration of any subject must be made by giving notice when said reconsideration shall take place.

RULE 5. No business shall be taken up, except in the order prescribed, unless upon motion that the regular order of business be suspended for the transaction of the business set forth, and such motion shall be sanctioned by a majority vote.

RULE 6. All National Officers and Representatives shall keep their respective seats during the continuance of the meeting, except by the permission of the President.

RULE 7. No National Officer or representative to the Convention shall read any report that takes more than thirty

minutes in the reading thereof except with the approval of the Convention.

All reports of National Officers and representatives to the Convention must be printed or mimeographed, and if their oral reading will take more than thirty (30) minutes they shall be referred to the Committee on Distribution.

RULE 8. Robert's Rules of Order shall govern the Conventions of this National Association, unless otherwise provided.

RULE 9. The National President is authorized to levy fines against disorderly representatives during the sessions of the National Conventions.

Section 10. Order of Business

During the Executive Session there shall be an open Bible on the altar.

1. Calling the National Association to order.
2. Appointing Committees on Credentials.
3. Report of Committee on Credentials.
4. Appointing officers to fill vacancies and for the Session.
5. Opening the National Association in ritualistic form.
6. Motion or resolution covering Session and proceedings, address of welcoming, etc.
7. Appointing of Standing Special Committees.
8. Report of National Officers.
9. Reports of Subordinate Associations, or Districts as the case may be.
10. Roll call for the introduction of new business.
11. Reports of Committees in order named.
12. Report of Special Committees.

(Final Closing).

Section 11. Appointed Committees. The appointed Committees of this National Association shall be as follows:

Committee on credentials, which shall be appointed by the National Administrative Committee. It shall be the duty of the Credentials Committee to examine the credentials of all representatives.

On Auditing, which shall audit the books and accounts of the National Office and examine into the reports upon all matters of finance of this National Association referred to it by the same and shall analyze and report upon the expense account of each National officer.

On Constitution, to which shall be referred all resolutions which contain proposed amendments to the Constitution.

On Charters, to which shall be referred for investigation all applications or propositions for the issuance or revoca- [fol. 60c] tion of charters submitted to it by the National Convention.

On Distribution, to which shall be referred the Annual Report of the President and such other papers or reports as the National Convention shall direct; and it shall be their duty to analyze the same and distribute all recommendations and suggestions in such papers or reports to the Committee or other departments or officials of the National Association to which they may belong.

On Good of the Order.

On Grievances, which shall examine and report on all matters of grievances or appeals referred to it by the National Convention.

On Legislation, to which shall be referred all resolutions regarding proposed legislation.

On Dues and Revenues.

On Resolutions.

On Secret Work.

(a) These Committees shall consist of five members each. All Committees shall be selected in the same manner as the Credentials Committee subject to the approval of the Convention.

(b) When deemed necessary by the Convention, Special Committees may be appointed under the above provisions.

Section 12. Any reference contained in the Constitution to any minimum required vote of the delegates to a National Convention it shall be understood that such required percentage vote shall be based upon the per capita vote of the number of Delegates who actually vote on the specific question. The Delegates to the National Convention who may not be present or refrain from voting shall not be included in the computation for the purpose of determining whether the minimum required percentage vote has been obtained.

Section 13. Special Conventions. The National Executive Committee may in its discretion whenever it shall deem it necessary in the interest of the organization convene a Special National Convention. Any such Special National Convention shall have all of the powers of any regular National Convention and be governed by the rules and regulations applicable to regular National Conventions except as modified or altered by the National Executive Committee in its call for the Special National Convention. The Representatives to such Special National Convention shall have the same voting power as the Representatives from the same District, had in the immediately preceding regular National Convention.

ARTICLE X

Districts and Subordinate Associations

Section 1. Eligibility for Charter. Any fifteen or more persons eligible for membership in the National Association may constitute a District on receipt of a Charter from the National Association in the manner herein set forth if they have either (a) regularly and honorably severed their membership in any District as or (b) have never been a member of the National Association or any District.

Section 2. Application for Charter. Applications for Charter shall be made to the National Office and must be accompanied by a fee of fifty dollars.

Section 3. Issuance of Charter. In the case of any application received between Conventions the National Presi-

dent shall refer the application to the National Executive Committee. The National Executive Committee may approve or disapprove the issuance of the Charter by the National office, subject to confirmation by the next National Convention. In the case of any application received while the National Convention is in session, the same shall be referred directly to the Convention, which may deny the application or order the National President to issue the Charter.

Section 4. Suspension and Revocation of Charters.

(a) The charter of a District may be suspended or revoked as hereinafter provided, when said District fails or refuses to conform to the National Constitution or to National Policy of the National Association, or ceases to function as a legitimate District.

And an Administrator may be appointed, as provided in paragraph (k) hereof for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of the Districts and of the National organization.

(b) Suspension or revocation of a charter may be accomplished only after charges have been filed in the following manner: Charges may be filed by a National full time elective officer or any three members of the National Executive Committee. Such charges shall be filed with the National office which shall within thirty days of its receipt mail a copy to each member of the National Executive Committee and to the District so charged. The District shall file a written answer to the charges no later than thirty days following the mailing of the charges by the National office.

(c) Upon the filing of the aforesaid charges, the National office shall designate a Trial Committee consisting of three members who must be full time, paid elected officials of a District, one of whom shall be from a District different from the other two members. Said Trial Committee shall conduct a hearing at a place and time which it shall designate; provided, however, that the date of the hearing may

not be set earlier than 40 days following the mailing of the charges by the National office.

(d) A written record of the hearing shall be made. There shall be full opportunity for examination and cross-examination of all witnesses. The District may be represented by counsel if permission is granted by the Trial Committee.

The Trial Committee shall have full authority to determine the rules of procedure which shall govern all parties.

The Trial Committee shall have full authority to direct the District to produce or make available to the Trial Committee, or its designated agent any books, records or other documents in the possession or under the direction or control of the District and to direct any officer or agent or member of the District to appear for examination.

(e) After a full hearing, the Trial Committee shall render a written decision which shall be filed with the National office which shall distribute copies of the same to the charged District, the parties who filed the charges and to each member of the National Executive Committee. Said decision shall either recommend a dismissal of the charges in whole or in part, or a suspension or revocation of the charter or such other course of action which it deems necessary to obtain compliance with the National Constitution or National Policy.

The full record of the proceeding shall be deposited at the National office of the National Association.

(f) In the event either the District, which has been charged, or the charging parties, desire to appeal to the National Executive Committee, notice of the same together with a memorandum setting forth the exceptions taken and brief comment thereon shall be filed with the National office within twenty days from the mailing by the National office of the Trial Committee's decision.

If no such appeal is taken within the prescribed time, the decision of the Trial Committee, if it is based on a majority vote, shall be deemed to be final.

(g) The National Executive Committee, on the basis of the entire record, shall render its decision in the event an appeal has been taken. Such decision may call for a dis-

missal of the charges in whole or in part, for the suspension and/or revocation of the charter and/or for such other course of action which may be necessary to obtain compliance with the National Constitution or National Policy. A copy of such decision shall be forwarded to the District and to the charging parties.

Any member of the National Executive Committee or any National elected officer who may have filed the charges, may attend any meeting of the National Executive Committee at which time the matter is under consideration, but he shall not participate in the discussion or in the vote taken thereon; provided, however, that the National President, though he may have filed the charges, shall nevertheless preside over any meeting of the National Executive Committee considering the matter but be subject to the above indicated restrictions.

The decision of the National Executive Committee shall be final until amended or reversed by the National Convention.

(h) An appeal may be taken by either the District or the charging parties from the action of the National Executive Committee to the next regular convention or to a panel of three public persons who shall be designated by the National Executive Committee. The person taking the appeal shall when requesting the appeal indicate which alternative is desired. Notice of such appeal must be filed with the National office no later than thirty days from the mailing of the decision of the National Executive Committee and all briefs in support of the appeal must be submitted simultaneously with the filing of the notices of appeal. The decision of the National Convention or the National Panel, as the case may be, shall be final and conclusive. The National Convention and the National Panel shall have the authority to determine their respective procedures applicable to such appeals.

(i) A suspension of a charter shall require, in the case of the National Executive Committee, a two-thirds vote and, in the case of the National Convention, a majority vote of the delegates.

A revocation of a charter can occur only through a two-thirds vote of the delegates at a National Convention; provided, however, that when one of the charges against the District is a violation of Article XIV, Section 2 of the National Constitution, the charter may be revoked by a two-thirds vote of the National Executive Committee.

(j) Whenever charges are duly filed hereunder against a District, the National Association, or National Executive Committee shall have the authority, if in their determination it shall be necessary to do so in the interest of the National Association and the members of the District, pending the decision of the National Executive Committee, to suspend the charter of the District, and to designate an Administrator who shall have the same powers and duties as provided in Paragraph (k) below.

(k) In the event the charter of a District, is suspended or revoked, as provided in this National Constitution, the seal, property, assets and all books and documents of the District shall be turned over to an Administrator appointed by the National Executive Committee or the National Convention, as the case may be, to be held and administered for the benefit of the members of the District.

Section 5. Funds and Property of Districts. All money, property and other assets and interest acquired by a District, shall be held by such District, in its own name and right or by the appropriate officers of such District, for its benefit, and in the event its charter is eliminated entirely because of change in structure of the National Association, or revoked for any reason whatever, such money, property and other assets and interests shall be retained by the District for the benefit of its members. Indebtedness to the National Association shall be a prior claim on the holdings of any District.

Section 6. Disbanding and Voluntary Mergers of Districts.

(a) No District shall disband, except as provided in subsection (b), as long as seven members in good standing object to such action. Notice of a proposal to disband shall be sent to every member and a reasonable opportunity be

given for expression of objection before any action is taken on such proposal. Any District disbanding shall have its funds, property and assets administered as provided in Article X, Section 4(k).

(b) Any two or more chartered Districts may merge and a new charter shall be issued to the merged organization which shall have the same territorial jurisdiction as the merged subordinate bodies. Such merger shall result when approved either by a ⅔ vote of the Representatives at a National Convention or by the majority vote of the respective membership voting of the subordinate bodies seeking to merge.

Section 7. Jurisdiction of Districts. Each District shall have exclusive jurisdiction over all members of the National Association within its territory, who shall be governed by the Laws, Rules and Regulations of such Districts.

All members of the National Association may at their option transfer their membership to any District they desire and upon such transfer shall be entitled to a refund of dues from the District transferred from, paid in advance of the quarter in which the transfer is made. The District shall use no compulsion in transfers.

The territorial jurisdiction of each District, chartered by the National Association shall be determined by drawing a half-way line between the ports named in the charters of the adjoining Districts.

The National Executive Committee shall have the authority to permit a District to accept into membership, on the basis of such Rules and Regulations as said Committee may issue from time to time, such workers who are not otherwise eligible under Article III of the National Constitution, but who are employed in the maritime or allied industries. The Rules and Regulations shall include, among other matters, provision for the rate of initiation fees, due to be paid by such members and the per capita tax to be paid by the District to the National Association with respect to such members.

Section 8. Each District, may promulgate its own Bylaws and Regulations provided, however such Bylaws and

Regulations must first be submitted to and approved by the National Executive Committee, and shall not be inconsistent or in conflict with any of the provisions of this Constitution. Regulations shall include shipping rules.

Section 9. Eligibility for Office in Districts.

Any member shall be eligible for nomination to and election as a full-time and paid elective office of a District provided he is at the time of nomination and election a member in good standing and (a) has been a member of the National Association or of any other organization which has duly affiliated with the National Association, for 5 years immediately preceding the date of closing of nominations; and (b) has been a member of the District and/or predecessor Subordinate Association for 2 years immediately preceding said date; and (c) has had either 180 days of employment on vessels covered by collective bargaining agreement with the Union during each of any 2 full calendar years of the 3 calendar years immediately preceding the closing date of nominations, or equal time served as full time and paid elected or appointed official of the National Association or of a Subordinate Association or the District or of any other organization which has duly affiliated with the National Association.

A candidate for District President, in addition to the qualification specified above, must have previously been elected and served as a full time and paid official of a Subordinate Association, District or of any other organization which has duly affiliated with the National Association.

A member may be nominated for and if elected, fill and serve simultaneously as a national elected officer and as a District elected officer but in such event, he shall be entitled to receive compensation from only one office.

No member shall, while serving in office, be receiving a pension under any MEBA Pension Plan.

No member may hold an elective or appointive office in any District who is a member of, or supports an organization which favors a totalitarian form of government or who is a member of or supports an organization which advocates the overthrow of the Government of the United States by force or violence or is disqualified by law.

Section 10. Reports to National Association. Each District, shall, on or before March 1st of each year, submit to the National Office on forms provided for the purpose a report giving a synopsis of its proceedings for the preceding calendar year, a list of its current officers and the number of members in good standing as of December 31st. Dis- [fol. 60d] tricts failing to submit their annual report by or before March 1st shall have their dues payments to the National Association determined by the last annual report submitted by each District.

Each District shall file with its annual report a financial report showing income, disbursements and financial balance for the preceding fiscal year.

The annual financial reports shall be prepared by a legitimate firm of recognized accountants, who shall prepare such reports on the basis of information obtained from the firms and banks in whose custody the assets of the individual District are placed. In the case of securities and bonds, such financial reports must indicate that the securities contained in the report have been personally viewed by the accountant submitting the financial statement.

In the event that a District fails to submit its annual financial report on or before the required date and any other reports deemed necessary under this Constitution, failure to conform to this provision shall be grounds for not being seated at any Convention, or other meetings of an official nature until such reports have been submitted.

In the event that such reports are not made available to the National Office by June 15th of each year, the National Office shall immediately obtain a Certified Public Accountant for the purpose of examining the books and assets of the delinquent District, and upon completion of said audit the accountant shall submit a detailed report to the National Office which shall forthwith make the report available to the National Executive Committee. The expense of said audit shall be borne by the National Association, subject to reimbursement by the District involved.

Any District, which fails to open its books for such audit by the National Association, shall be subject to having charges filed for the suspension of its charter, and such

suspension if decreed shall continue until all records have been made available to the certified public accountant dispatched from the National Office. In the case of Districts having 100 members or less, certified bank statements shall be acceptable in lieu of auditor's reports.

Changes in officers subsequent to the Annual Report shall be promptly reported to the National Secretary.

Section 11. The year as herein referred to shall be a calendar year beginning January 1. The first quarter as herein referred to shall commence January 1. Any District, which fails to pay its dues to the National Association for the second, third and last quarters before the last day of the preceding quarter, and for the first quarter, before the first of March together with any other amounts due the National Association on that day shall not be in good standing with the National Association until such dues and other amounts have been paid.

Section 12. All members visiting Districts shall satisfy the District, which they visit that they are in good standing. Visiting members granted such courtesy are advised that a District meeting in executive session has the inherent right to exclude anyone other than officers and members in good standing of said District during such meeting. Visiting members shall be granted voice, but no vote at membership meetings.

Section 13. Members in good standing who shall be absent from their own District and not having the password, may receive from the Chief Executive officer of a District, an order for the password, attested by the Secretary. The Chief Executive officer of a District, to whom they may present the order is authorized to invest them with the password.

Section 14. When deemed necessary any District may adopt a local password.

Section 15. When any District initiates a member for the benefit of another District such member shall be required to sign a voucher, which shall be forwarded to the

District of which he is thus made a member to be attached arrange its dues accordingly.

Section 16. Each District may, at its option, become beneficial, as the name of the National Association indicates, by paying to members when sick, or, in the case of death, to their family such sum as it shall adopt in its Bylaws, and may arrange its dues accordingly.

Section 17. Districts shall be known and designated by the Charter number only, and none of their stationery or other printed matter shall bear any name, description or title, other than "Marine Engineers' Beneficial Association" with the number of their Chapter attached thereto.

A District may have the names and titles of the appropriate officers of the District affixed to their stationery and other printed matter.

Section 18. Letters emanating from a District shall NOT be official unless bearing the seal of the District.

Section 19. When any District completely ceases to function its Charter shall be considered as forfeited and its property and assets shall be treated in the same manner as in the case of a revocation of a Charter of a District.

Section 20. Each District shall furnish the National Office with a list of ALL CHANGES IN MEMBERSHIP and the number of membership meetings held each month. This shall include the names of all initiated, together with the date of initiation, all suspended and dropped from the rolls, together with the reasons for the same, rejections, reinstatements, transfer cards granted or received, and all deaths.

Failure of any District to furnish such reports shall subject the District to a fine of fifty dollars ($50.00) per month for the first three months of such delinquency; for each following three months in which such reports are not filed such penalty shall be doubled. All fines must be paid previous to any National Convention.

Section 21. Districts shall not print or publish any mailing list of their members and shall not give any names and addresses of their members to any one except the National

Office, except for Welfare Fund or Pension Plan purposes, provided, however, that Districts may furnish other Districts with names, addresses, and other pertinent data concerning members, when an official request is made for such information under the seal of a District and provided further that every bonafide candidate for election to office in the District shall have the right, once within thirty days prior to an election for which he is a candidate, to inspect a list containing the names and last known addresses of all members of the District, who are subject to a collective bargaining agreement requiring membership therein as a condition of employment.

No District or member of the National Association, shall use the name of said District as authorizing the publication of any book, pamphlet, circular or other printed matter, containing any advertisement whatever, nor shall it authorize any person or persons to do so, unless approved by the National Executive Committee.

Section 22. All forms of the National Association, lodge regalia, badges and pins to be used by the National Association and the Districts shall have the Union Label stamped on same, and must be procured through the office of the National Office.

Section 23. Districts, when such act is deemed advisable or necessary in the enforcement of a strike, shall have the right to levy strike assessments upon their membership, by presenting such requirement in resolution form at two consecutive regular meetings. The reading of the resolution at the first meeting shall be for presentation purposes only, and no arguments for or against shall be entertained. At the second reading the subject shall be considered, argued pro and con, and if adopted by a two-thirds majority shall become effective immediately provided, however, the vote shall be by secret ballot.

Under no conditions shall any District levy any assessment for any cause whatsoever against a member of another District.

Section 24. Vessels Operating Under Unfair Conditions. When a vessel known to be operating under unfair condi-

tions sails from a port of one District for a port of another District, the District claiming jurisdiction over the port of departure shall notify the District, which claims jurisdiction over the port to which said vessel is destined, of the sailing of said vessel, also of conditions existing thereon at the time of her departure from said port.

A District failing to comply with this rule, which shall be construed as a rule of the National Association, shall be fined the sum of one hundred dollars ($100.00), which shall be paid to the National Office.

The National Executive Committee shall be the Trial Board and their findings shall be final.

ARTICLE XI

Finances

Section 1. Dues and Revenues to National Association. For each member in good standing on December 31, and for each member not more than one year in arrears as per Section 3 of Article XIII, each District, shall pay to the National Association at the beginning of each calendar quarter, such sum for each member thereof at the time of its annual return to the National Office, as may be fixed by the National Convention. No change in such sum made by any National Convention shall be effective prior to the next calendar quarter following such Convention.

Other revenue of this National Association shall be raised as follows: By sale of Charters, stationery, supplies and from the "American Marine Engineer" or any other enterprise engaged in by the National Association.

Section. 2. Per Capita Tax and Expenditures by National Association

(a) The guideposts in fixing per capita tax at National Conventions shall be:

(1) The framework established by the dues rate fixed in the National Constitution.

(2) Recognition of the respective tasks which must be performed by the Districts and the financial burdens involved.

(3) Recognition of the tasks which must be performed by the National Association and the financial burdens involved.

(4) The monthly per capita tax shall at no time exceed twenty five per cent (25%) of the monthly dues rate established in the National Constitution.

(b) When the National Convention is in session, a two-thirds affirmative vote shall be necessary for the appropriation of money. Between National Conventions, the expenditures covered by the budget approved by the National Convention are hereby authorized. In the event an emergency arises requiring the expenditure in excess of the budget approved by the National Convention, a sum not to exceed ten thousand dollars may be paid by the National Office when approved by the majority of the National Executive Committee. The ten thousand dollars limitation may be exceeded if approved by a majority vote of the Districts. Each District shall determine for itself the manner in which its decision shall be made and its vote to the National Association shall be cast on the same basis as its representation at an annual Convention.

Section 3. Revisions of Dues, Fines and Assessments by National Convention. The National Convention shall have the power by majority vote to regulate, modify and otherwise control the initiation fees, dues, fines and assessments levied by the Districts, or any of them whenever in the judgment of the Convention such action is necessary in the best interests of the National or District.

When the Convention by majority vote authorizes a change in the dues structure, or where the Convention by majority vote levies an assessment, such dues change and/or assessment, before becoming effective, must be immediately submitted to the membership in the form of a 90-day referendum ballot. If the referendum ballot, by simple majority confirms the action of the Convention, such dues change or assessments shall be considered effective upon the date provided for in the enabling resolution. If the referendum vote does not carry in favor of the Convention

action with regard to the dues change or assessment, then such dues change and assessment shall not be placed in effect.

Section 4. Assessments and Fines. Subject to the provision of Section 3 of this Article, the Districts acting in accordance with their Constitution and Bylaws shall have power to levy such assessments as may be necessary for extraordinary purposes and impose fines not to exceed one thousand ($1,000.00) dollars for violation of membership obligations.

Provided, however, that as a minimum requirement, any such assessments may be approved only (a) by majority vote in a secret ballot of the members in good standing, voting at a regular or special membership meeting, after reasonable notice of the intention to vote upon such question or (b) by majority vote of the members in good standing, voting in a membership referendum conducted by secret ballot.

No fine may be imposed unless the member has been (a) given written specific charges, (b) given a reasonable time to prepare his defense and (c) afforded a full and fair hearing.

Section 5. Initiation Fees. The initiation fee for any newly admitted member shall be $1,000.00.

The National Executive Committee shall have the authority to provide for a method of payment and lower or waive the amount of the initiation fee in accordance with the need for an organizational drive in any area.

In the event the initiation fee is increased by action taken by a District such change may be made effective only if approved (a) by majority vote by secret ballot of the members in good standing voting at a regular or special membership meeting, after reasonable notice of the intention to vote upon such question, or (b) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot.

Section 6. Membership Dues. Subject to the provisions of Section 3 of this Article, the monthly dues to be paid by the members shall be prescribed by the Constitution and

Bylaws of the respective Districts, and shall not be less than ten dollars ($10.00) per month, except where a different amount has heretofore been approved, payable quarterly in advance or by dues check-off under any collective bargaining agreement maintained by the National or Districts. Such dues shall be paid into the treasury of the District, to which the member belongs. The monthly dues of all members of Districts shall be paid not less than quarterly in advance i.e., previous to January 1 to be in good standing for the first quarter; previous to April 1 for the second quarter; previous to July 1 for the third quarter; and previous to October 1 for the last quarter of the year. Members of Districts, who pay dues by the check-off system under any collective bargaining agreement maintained by the National or Districts, shall be in good standing provided dues are checked off and received each time as provided in the collective bargaining agreement. It shall be the duty of each individual member to assume all responsibility for maintaining his membership in good standing.

The District shall issue an official receipt for all monies received from members. No member of any District shall be entitled to any benefits of the District or be considered in good standing unless his dues are paid up for the full current calendar quarter or paid in accordance with any dues check-off system under any collective bargaining agreement maintained by the National or District.

Section 7. Transfer of Dues, etc. When any official or agent of a District collects dues, assessments and other monies from members of other Districts such monies shall be deposited in the fund of the District, the official or agent of which has made the collection and such District shall be obligated to forward the amount with an itemized account to the proper District by the 10th of each month of all such monies received during the preceding calendar month.

Should a District have a grievance in this matter, the case shall be referred to the National Secretary-Treasurer in writing under the Seal of the aggrieved District. The National Secretary-Treasurer shall investigate the circum- [fol. 60e] stances and if the grievance is sustained, he shall bill the delinquent District for the amount owed plus a ten

per cent fine and declare the delinquent District in bad standing with the National Association until such amount of dues plus National fine is received by the National Secretary-Treasurer. Upon receipt of the proper amounts, the National Secretary-Treasurer shall immediately forward the amount requested in the letter of grievance to the aggrieved District and delinquent District of its return to good standing with the National Association.

ARTICLE XII

Impeachment and Removal from Office of National Officers, Including National Executive Committee Members

Section 1. Charges. Charges of misdemeanors in office, malfeasance, misfeasance, nonfeasance, corruption, favoritism, extortion, oppression in office, gross misconduct or habitual drunkenness may be filed by any one or more Districts bearing the Seal of said Districts against any National Officer, including the members of the National Executive Committee.

Section 2. Suspension from Office. The filing of charges shall not operate as a suspension from office except that the National Executive Committee may by majority vote suspend the National Officer or National Executive Committee Member against whom charges have been filed for a period not to extend beyond the final decision on such charges.

Section 3. Answer of Accused. Any charges filed as herein provided shall be submitted by the National Executive Committee to the accused individual who shall be given 30 days to prepare the defense to submit his answer to the National Executive Committee.

Section 4. Trial of Accused. A hearing shall be held before the National Executive Committee at which time the accusing Districts and the accused individual shall be given a full opportunity of submitting their respective cases. Testimony may be presented through witnesses, or documents and the parties interested shall have the benefit of counsel if they desire, provided said counsel shall be a

marine engineer and a member of a District in good standing. A written record shall be made of all testimony and documents submitted at the hearing. The National Executive Committee may dismiss the charges or by a two-thirds vote suspend or dismiss the accused from office. Failure to obtain a two-thirds vote shall be deemed to be a dismissal of the charges against the accused.

Section 5. Referendum. In the event the National Executive Committee shall by a two-thirds vote suspend or dismiss the accused, the National Executive Committee shall promptly cause the charges, answer and the record of the hearing to be submitted to the entire membership for referendum vote on the question of whether the decision of the National Executive Committee shall be sustained or reversed. A period of at least 90 days shall be allowed for the return of ballots in any such referendum. A majority of the votes cast shall determine the final decision.

Section 6. Decision. If the final decision shall be in favor of the accused, he shall be reimbursed, by the Districts, which filed the charge, for the legitimate costs incurred by him in his defense. If the final decision shall be against the accused, he shall be deemed automatically suspended or removed from his office or position in accordance with the decision of the National Executive Committee and in the case of dismissal shall be barred from holding any office, position or employment in the National Association.

Section 7. Criminal or Civil Liability Not Affected. A decision rendered in favor of or against any accused under the provisions of this Article shall not in any way affect his criminal liability or his civil liability under the law to the National Association or District.

ARTICLE XIII

Rights and Duties of Membership

Section 1. General Rights. All members are entitled to all the rights, benefits and privileges of membership set forth in this and other articles of this Constitution and in

Section 6. Transfer and Withdrawal Cards.

Members who have paid all of their indebtedness, and apply in writing at a regular meeting for a withdrawal card, may be granted same; the card shall be sufficient evidence the holder was in good standing when issued, and may be reinstated in the District, issuing withdrawal upon the payment of fifty ($50) dollars and three months' dues in advance, provided, however, that he has not worked under the authority of his license during the period of withdrawal.

The holder of a withdrawal card who wishes to reinstate shall submit a written statement setting forth his whereabouts and employment record since the date of issue of the withdrawal card. If it is ascertained that he has worked under the authority of his license during such period of withdrawal, he shall be required to pay in reinstatement fee of one thousand (1,000) dollars plus dues and assessments while working under the authority of his license, plus three months dues and assessments in advance. A member who falsifies his reinstatement application in this respect may be charged with violation of Oath of Obligation and be tried and penalized accordingly.

Every ex-member reapplying for membership from withdrawal card shall make application in writing to the District they have withdrawn from. The Chief Executive officer of a District, shall read the application to a committee of three members for investigation as to the desirability of reinstating the applicant. The inquiry shall be for the purpose of determining whether the applicant is of good moral character, possesses the required qualifications for an applicant for initial membership, and whether his activities during the period of his withdrawal have conformed to the principles and objectives of the National MEBA and to the original Oath of Obligation. Failure to meet any of said requirements shall constitute a basis for denying reinstatement. In the event any objections are raised against reinstatement, because of a failure to meet the foregoing requirements, all the provisions of the Constitution relating to the procedure for filing the charges against members,

hearings on the same and appeals shall be complied with and shall be deemed to be applicable in all respects. The Committee shall thereafter submit its findings with their recommendations to the earliest possible regular meeting of the membership, and a majority vote of the members voting at said meeting, by secret ballot, shall be necessary to approve said application for reinstatement. This provision shall apply to all members whose request for reinstatement hereunder has not been acted upon by any Subordinate Association, or District as the case may be, prior to May 20, 1957.

Any member who (a) applies for and receives a withdrawal card subsequent to the close of the 1960 National Convention, and (b) prior to the 1960 National Convention applied for and received a withdrawal card and does not, within sixty days following the mailing by his Local, or District as the case may be, to his last known address, apply for reinstatement on the basis herein above set forth, and who at any subsequent date applies for reinstatement, his application for such reinstatement shall be deemed to have the same status as an application for original membership and be handled in the same manner as provided in this Constitution for such original application.

Members who have paid all of their indebtedness, and apply in writing, at any regular meeting, for a transfer card, shall be granted the same providing dues are paid through the quarter during which such transfer is requested, providing there be no charges against them. The transfer card shall be promptly forwarded to the Chief Executive officer of a District, to which a member is being transferred by the Chief Executive officer of a District, issuing the transfer. The address and beneficiary of the member transferred shall be furnished by the Chief Executive officer of a District, issuing the transfer, as provided for on the reverse side of the transfer card.

Where the application of any member for a transfer to another District is rejected by that District, he shall retain his membership in the District, from which the transfer is issued.

the Constitution and Bylaws of the respective Districts including the right to nominate candidates, to vote in elections or referendums, to attend membership meetings and to participate in the deliberations and voting upon the business of such meetings subject to reasonable rules and regulations in the appropriate Constitution and Bylaws, to meet and assemble freely with other members, to express any views, arguments and opinions and to express, at meetings, his views upon candidates, in any election or upon any business properly before the meeting subject to the Organization's established and reasonable rules pertaining to the conduct of meetings; provided that nothing herein set forth shall be constituted to impair the right of the National Association to adopt and enforce reasonable rules as to the responsibility of every member toward the Organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations. Any member falling within Section 1 (d) of Article III shall have a voice and vote only on such questions in which he is directly affected. Other members shall not have any voice or vote on questions affecting exclusively those members covered in Article III, Section 1 (d).

Any member who becomes licensed to practice law and who does engage in such practice of the law on the basis of his license shall forthwith be obligated to obtain a withdrawal card in accordance with the provisions of the National Constitution.

Section 2. General Duties. All members are expected to do all in their power to maintain the interest, the life and usefulness of the Association. They shall comply with and observe all provisions of all outstanding collective bargaining agreements of the National Association or of any District, under which they may be employed. No member shall traduce, slander, or wilfully or maliciously injure the National Association, any District, or any member thereof in any way.

Members charged with violations of this section shall be tried by the District where the offense has been committed

in accordance with the procedures provided in its Constitution and Bylaws.

Section 3. Good Standing. Payment of Dues. No member shall be deemed in good standing unless his dues are fully paid up to and through the current quarter. Any member who shall be in arrears on his dues for a period of one year shall be dropped from membership unless otherwise ordered by the District, but in no case may such a member be retained on the membership rolls if he is in arrears for over two years' dues.

Section 4. Good Standing. Fines and Assessments. Any member who is in arrears for fines, assessments or other indebtedness to the National or District, and who does not pay same within one month, shall, before being suspended or dropped, have charges presented and tried in a manner provided in this Constitution, Appendix Article IX.

Section 5. Reinstatement. Any member of a District, who has been dropped, or expelled from membership in accordance with the provision of the Constitution, can only apply for reinstatement to the District from which he was dropped, or expelled. Any member falsifying his application in this respect shall be subject to charges, and if after a due hearing as provided in this Constitution, such fact is proven, he shall forfeit all monies paid on the falsified application and be expelled from membership and the National Office be notified of such fact. The reinstatement fee for members dropped or expelled shall be one thousand ($1,000) dollars, plus three months dues in advance and any outstanding fines. Dropped members who have worked under the authority of their license while in a dropped status shall be required to pay dues and assessments while so working, in addition to the above reinstatement fee.

Any application for reinstatement shall be deemed to have the same status as any application for original membership and shall be handled in the same manner as provided in this Constitution for such original application.

Members transferring from one District to another shall be eligible to sick and death benefits in the District, transferred from until they shall become eligible to such benefits in the District transferred to, which shall be for a period of the current quarter, during which such transfer is granted.

When a member requests a transfer and such member in conformity with the Constitution is eligible to receive same, his request for transfer shall be presented to the membership meeting immediately following receipt of his request for transfer and in the event that he does not qualify for transfer by reason of being ineligible under the provisions of the Constitution, he shall be so notified immediately with the notification setting forth the reason for his ineligibility for transfer, with a copy of same referred to the District, into which member is requesting transfer.

Any member of a disbanded District who was in good standing at the time of its dissolution, and wishing a transfer card, shall make application to the National Office within one year from the date of the disbanding with the proof that he was in good standing at the time of the disbanding, and shall receive a transfer card upon the payment of the amount necessary to have continued his dues to the date of application had his District still have existed. Any person failing to take advantage of the one-year limit must apply as a new member and pay the regular initiation fee required by the District to which they make application. This applies to all who were members of Districts whose charters have been revoked or have lapsed, each of whom is at liberty to make application for membership regardless of their former affiliations.

Members of a disbanded District holding a card from the National Office, who is unable to deposit the same within three months may become a member at large by depositing their cards with the National Office and paying in advance dues at the regular rate per annum; provided that any members at large, as provided for, must deposit their cards with a District, as soon as it becomes possible for them to do so.

ARTICLE XIV

Strikes and Contracts

Section 1. All collective bargaining agreements shall be held jointly by the District and the National Association.

Section 2. No District may call a strike unless it first obtains the approval of the National Executive Committee.

ARTICLE XV

Submission of Documents for National Executive Committee and Action by National Executive Committee and National Convention

Section 1. Submission of Documents. In the submission of all documents for the attention of the National Executive Committee two (2) copies shall be forwarded to the National Office.

Section 2. Action by National Executive Committee. The National Executive Committee may take any action which it is authorized to take under this Constitution either at a duly convened meeting or by written authorization.

Section 3. Vote by National Executive Committee and National Convention. Any reference contained in this Constitution to any minimum required vote of the delegates to a National Convention or of the members of the National Executive Committee, it shall be understood that such required percentage vote shall be based upon the number of delegates or members of the National Executive Committee, as the case may be, who actually vote on the specific question. The delegates to the National Convention or members of the National Executive Committee who may not be present or refrain from voting shall not be included in the [fol. 60f] computation for the purpose of determining whether the minimum required percentage vote has been obtained.

Minimum Requirements for the Constitution and Bylaws of a District of the National Association.

There is attached as an Appendix the minimum requirements for the Constitution and Bylaws of a District. No

provision in any Constitution or Bylaws of a District may be in conflict with any of the provisions set forth in the appendix.

APPENDIX

Constitution for Districts

ARTICLE I

Name

Section 1. This District shall be known by the name and title of Marine Engineers' Beneficial Association No. ....., A.F.L.-C.I.O., City ..... State .....

ARTICLE II

Object

Section 1. The object of this Association shall be to unite its members fraternally, to improve, maintain, promote and protect the standard of the craft, to regulate the business matters of members of the Marine Engineers' Beneficial Association within its jurisdiction, pertaining to affairs of the Association, and when it may determine, to render succor to its needy, sick and distressed members and to bury its dead. This Association acknowledges the jurisdiction of the National Marine Engineers' Beneficial Association, AFL-CIO, of the United States of America.

Section 2. This Association shall be the exclusive representative for each and all its members for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment, and for negotiation and execution of contracts requiring members to continue membership in the Association as a condition of employment and contracts requiring the employer to deduct, collect or assist in collecting from the members' wages, any dues, fees, assessments, fines, or other contributions payable to the Association.

This Association is irrevocably authorized and empowered exclusively to appear and act for each and all of its members and on their behalf before any Board, Court, Com-

mittee or other tribunal in any matter affecting his or their status, as employees, or as members of the Association, and exclusively to act as agent of all members and bind each and all of them in the presentation, prosecution, adjustment of any kind of character arising out of the employer-employee relationship as fully and to all intents and purposes as the member might or could do if personally present, said power to include but not to be limited to the prosecution, adjustment and settlement of grievances, complaints or disputes arising under any collective bargaining agreement to which the Association is a party.

Section 3. All members of the National Marine Engineers' Beneficial Association shall receive from all Districts equal shipping rights in all ports, the right to pay dues in any District for transmittal to the respective District of which he is a member and the right to full aid and cooperation from the officers of all Districts in the settlement of any and all disputes under our contracts, and such other aid and cooperation as might be necessary and reasonable; provided however, that all members shall recognize the jurisdictional requirements as per Section 7 of Article X captioned "Districts."

Districts collecting funds for members of other Districts shall deposit the same in their own funds and then remit the amount collected to the Districts to which the paying member belongs. Such funds shall be remitted to the proper District no later than thirty days after collection. Failure to remit funds collected to the paying members' District within the time specified shall constitute a flagrant violation of this Constitution, and shall subject the local official of the non-remitting District having the responsibility to make such remittances to charges of non-feasance and misfeasance in office.

ARTICLE III

Composition

Section 1. (MEMBERSHIP OF DISTRICTS SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE III, NATIONAL CONSTITUTION.)

ARTICLE IV

Membership

Section 1. Any person duly qualified as prescribed in Article III may become a member of this Association upon payment of the required initiation or reinstatement fee and penalties, if any, and three months' dues in advance to being on date of signing application, into the treasury of the District and being duly elected according to the provisions of this Constitution and the Bylaws of the District.

Section 2. No District shall act upon a petition of any applicant for initiation whose residence may be nearer some other District under this jurisdiction without the consent of such District.

Section 3. Propositions for membership should be made one week before being balloted for. However, candidates may be proposed, elected and initiated at any one meeting.

Section 4. Candidates for membership should be proposed by one member and seconded by another who can speak knowingly of their character and proper qualifications for admission. The proposal shall then be referred to an Investigating Committee, who shall report as to their qualifications for membership.

Section 5. Previous to the ballot being cast for membership, the Chief Executive officer of a District, shall request the members to state whatever knowledge they have of the candidate's character and qualifications, and whether there is any serious objection to their becoming members. An Application may be withdrawn with the unanimous consent of the members present before the Investigating Committee has reported but not afterwards.

Section 6. After the report of the Committee the ballot must be spread whether the report be favorable or unfavorable. It is the ballot, and not the report of the Committee, which elects or rejects a candidate.

Section 7. When the candidates are balloted for, a majority for or against, of the total vote cast, shall determine

their election or rejection. If any candidate is rejected he cannot be balloted for again until two months have elapsed, and he is not eligible for membership in any other District of the Marine Engineers' Beneficial Association without the consent of the District where rejected. Provided, however, that when any engineer has made regular application to a District and been rejected, he shall have the right of appeal to the National Executive Committee, and, in the event of their finding that the rejection was due to unfair dealings, they shall permit the applicant to apply for membership in the District next nearest to his place of residence or employment.

Section 8. Candidates shall pay with their application such sum of money as the Bylaws shall specify, and in case they are rejected the fee shall be returned. If a candidate is rejected, all other Districts shall be notified of the rejection through the National Office.

Where a candidate is permitted to deposit less than the full amount required for admission into membership with the obligation to complete payment thereafter, and he is subsequently denied admission by the organization for any reason whatever, the payments he has made toward his initiation fee shall be returned to him. In the event, however, he fails to complete payment on his initiation fee within one year, the payments made by him shall be forfeited and he shall be deemed ineligible for admission into membership.

This provision shall apply to cases of application for reinstatement by members who have previously been dropped or expelled and application for reinstatement on the basis of withdrawal cards which under the National Constitution are to be handled in the same manner as original applications for membership.

Section 9. Members at the time of initiation shall subscribe their names to the Constitution and Bylaws and shall give their age, place of residence, class of license, and other information required, to the appropriate officer, to be entered in a book kept for that purpose. After initiation they

shall be handed a printed copy of the Constitution and Bylaws, and shall acquaint themselves of their duties to the National Association, District, and fellow members.

Section 10. No person shall be a member of more than one District at the same time, and a person who has been a member of a District cannot again be admitted a member of any other District under this jurisdiction without first producing a regular withdrawal card from such District with a certificate of his good standing, and that all his indebtedness has been paid, except as provided for in case of disbanded Districts.

Section 11. Members of the Marine Engineers' Beneficial Association shall not be permitted to accept a position upon any vessel until they have reported to and cleared from the District having jurisdiction over the port where such vacancy occurs.

Section 12. Any elected candidate eligible for membership, unable to appear at a regular meeting for initiation, may, on written request, be obligated by the officer so authorized by the District in which his application has been approved. Ceremonies thus conferred shall be reported in writing at the next regular meeting of the District signed by the officer conferring the obligation and the candidate and if approved by the District the candidate shall be declared a member and his name placed on the roster.

Section 13. Districts may provide for associate or contributing members, to be elected from citizens who desire to aid in our objects.

Section 14. Districts have the right to suspend or drop from membership chronic drunks or chronic performers who are inimical to the best interests of the membership. Whenever two members of the District prefer charges against a member for either of these offenses and the member has ample opportunity to appear before a membership meeting, the membership may by a three-fourths (¾) majority vote of the members voting, impose either of the above penalties or any other legal penalty. If any member

refuses to appear after notice has been given, the membership may proceed ex parte in his absence.

The specific charges must be written and the accused must be given a reasonable time to prepare his defense and afforded a full and fair hearing.

Section 15. In case of suspension or reinstatement of a member, two-thirds of the votes of the members present shall be required.

ARTICLE V

Election of Officers and Appointive Offices

Section 1. The tabulating of the ballots for the election of officers shall be held at any regular meeting in December, or at the first regular meeting in January of the election year. Such meeting shall be designated by each District and shall be printed in its Bylaws. Only members who are in good standing shall be entitled to have their ballots tabulated for the election of officers. Elections shall be held at regular three (3) year intervals, provided that this subdivision shall start with the 1960 Elections. Such elections shall be held by referendum and all balloting shall be done by use of a secret ballot. All ballots shall be returned to a bank, vault or post office box as designated in the Bylaws of the individual District and held there until the time designated by the District Bylaws for the counting of such ballot. A reasonable notice shall be given as to the time for nominations for a candidate for each election.

Any District desiring outside supervision of any election of its local officers shall request the National Organization, and the National Executive Committee shall have the authority, when so requested, to perfect arrangements for the supervision of the election of Local Officers of such District.

Section 2. Should the election or installation night fall on any legal holiday, the District may name any night succeeding the regular night on which the election installation will be in order.

Section 3. The Bylaws of a District shall provide for the manner of filling vacancies in any elective office.

Section 4. The Bylaws of a District shall provide for the elective offices and appointive offices and committees.

ARTICLE VI

Duties of Officers

The Bylaws of a District shall provide for the duties and responsibilities of each of the elected officials and provide for the necessary bonding of the appropriate officials as required by law.

ARTICLE VII

Duties of Members

Section 1. Members of Districts shall hold themselves in duty bound to recognize every other member in good standing and shall not traduce or slander their character or wilfully or maliciously injure them in any way on penalty of being suspended or dropped from the District. Members are expected to do all in their power to maintain the interest, the life and the usefulness of the District. They shall comply with and observe all provisions of all outstanding collective bargaining agreements of the National Association or of any District under which they may be employed.

Section 2. Members about to leave their position shall report the same to the District, which shall furnish, if possible, a competent member to fill the vacancy. Any member in want of a position shall report the same to the District.

Section 3. Members shall not hire or sail with engineers who are not members of the Marine Engineers' Beneficial Association or with members who cannot produce a receipt showing them to be in good standing in the National Association. However, on vessels not covered by agreement, permission may be granted by the District having jurisdiction over the port to sail with non-members.

Section 4. No member of the Marine Engineers' Beneficial Association shall succeed another member in any employment without first learning the causes leading to the change.

Section 5. Members losing their positions, the reasons for which are unknown and being supplanted by another member, without due inquiry being made, may make complaint to and be given a hearing by the officers of any District, in an emergency, by the Chief Executive officer of a District, and two members in good standing.

Section 6. No member of the Marine Engineers' Beneficial Association shall be permitted to sign an application for an original license as a marine engineer unless applicants can produce proof that they have made application for membership in the Marine Engineers' Beneficial Association.

ARTICLE VIII

Impeachment and Removal from Office of Elected Officers of Districts

Section 1. Charges and Answer. Charges of misdemeanors in office, malfeasance, misfeasance, nonfeasance, corruption, favoritism, extortion, oppression in office, gross misconduct, habitual drunkenness, or failure to conform to the National Constitution or to National Policy may be filed by a National full-time elected officer or any three members of the National Executive Committee or by a 10% vote of the members in good standing of said District against any elected officer of the District. Such charges shall be filed with the National office which shall within 30 days of its receipt mail a copy to each member of the National Executive Committee and to the officer so charged. The officer charged shall file a written answer to the charges no later than 30 days following the mailing of the charges by the President.

Section 2. Trial. Upon the filing of the aforesaid charges, the National office shall designate a Trial Committee consisting of three members who must be full-time and paid

elected officials of a District, one of whom shall be from a District different from the other two members. Said Trial Committee shall conduct a hearing at a place and time which it shall designate; provided however that the date of the hearing may not be set earlier than 40 days following the mailing of the charges by the National office.

[fol. 60g] Section 3. Trial of the Accused. A written record of the hearing shall be made. There shall be full opportunity for examination and cross-examination of all witnesses. The charged officer may be represented by counsel if permission is granted by the Trial Committee.

The Trial Committee shall have full authority to determine the rules of procedure which shall govern all parties.

The Trial Committee shall have full authority to direct the charged officer to produce or make available to the Trial Committee or its designated agent, any books, records or other documents in the possession or under the direction or control of the charged officer, and to direct any such charged officer to submit to examination.

Section 4. Decision of the Trial Committee. After a full hearing, the Trial Committee shall render a written decision which shall be filed with the National President who shall distribute copies of the same to the charged officer, the parties who filed the charges and to each member of the National Executive Committee. Said decision shall either recommend a dismissal of the charges in whole or in part, or a suspension or dismissal from office of the charged officer, or such other course of action which it deems necessary to obtain compliance with the National Constitution or National Policy.

Any decision which calls for the suspension or dismissal from office of the charged officer shall also contain a provision relating to the membership of said charged officer. In the case of a suspension or dismissal of the charged officer from office, his membership can be suspended or in the case of a dismissal, he may be expelled from membership. Also in case of dismissal, the charged officer shall be barred from holding any office, position or employment in the National Association or District. In the case of a suspension

or dismissal of the charged officer, the decision may also incorporate a provision for the appointment of an Administrator to act in the place of the suspended or dismissed officer.

The full record of the proceeding shall be deposited at the National Office of the National Association.

Section 5. Appeal to the National Executive Committee. In the event either the charged officer or the charging parties desire to appeal to the National Executive Committee, notice of the same, together with a memorandum setting forth the exceptions taken and a brief comment thereon, shall be filed with the National President within 20 days of the mailing by the President of the Trial Committee's decision.

If no such appeal is taken within the prescribed time, the decision of the Trial Committee, if it is based on a majority vote, shall be deemed to be final.

Section 6. Decision of the National Executive Committee. The National Executive Committee, on the basis of the entire record, shall render its entire decision in the event an appeal has been taken. Such decision may call for the dismissal of the charges in whole or in part, or for the suspension or dismissal from office of the charged officer, or for such other course of action which may be necessary to obtain compliance with the National Constitution or National Policy. A copy of such decision shall be forwarded to the District and to the charging parties.

Any decision which calls for the suspension or dismissal from office of the charged officer shall also contain a provision relating to the membership of said charged officer. In the case of a dismissal of the charged officer from office, his membership can either be suspended or he may be expelled from membership. Also in the case of dismissal, the charged officer shall be barred from holding any office, position or employment in the National Association or District. In the case of a suspension or dismissal of the charged officer, the decision may also incorporate a provision for the appointment of an Administrator to act in place of the suspended or dismissed officer.

Any member of the National Executive Committee or any National elected officer, who may have filed the charges, may attend any meeting of the NEC at which time the matter is under consideration but he shall not participate in a discussion or in the vote taken thereon, provided, however, that the National President, though he may have filed the charges, shall nevertheless preside over any meeting of the National Executive Committee considering the matter, but be subject to the above indicated restrictions. The decision of the National Executive Committee shall be final until amended or reversed by the National Convention.

Section 7. Appeal to the National Convention. An appeal may be taken by either the charged officer or the charging parties from the action of the National Executive Committee to the next regular Convention or to a panel of three public persons who shall be designated by the National Executive Committee. The person taking the appeal shall, when requesting the appeal, indicate which alternative is desired. Notice of such appeal must be filed with the National President no later than 30 days from the mailing of the decision of the National Executive Committee and all briefs in support of the appeal must be submitted simultaneously with the filing of the notice of appeal. The decision of the National Convention or the National Panel, as the case may be, shall be final and conclusive. The National Convention and the National Panel shall have the authority to determine their respective procedures applicable to such appeals.

Section 8. Required Vote for Suspension or Dismissal. The suspension or dismissal of an officer may be accomplished by a majority vote of the NEC, or in the case of the National Convention, majority vote of the delegates.

Section 9. Immediate Suspension. Whenever charges are duly filed hereunder against an officer, the National Executive Committee shall have the authority, if in their determination it shall be necessary to do so in the interest of the National Association and the members of the District pending the decision of the National Executive Committee,

to suspend the charged officer and to designate an Administrator who shall assume the powers and duties of the suspended officer and who shall occupy the same status as provided in Section 10 below.

Section 10. Appointment of Administrator. In the event an Administrator is appointed, as provided above, said Administrator shall assume all of the powers and duties of the officer whom he is replacing, and all books and documents and records of the Districts which are in the possession or subject to the control of the suspended or dismissed officer, shall be turned over to the Administrator to be held and administered for the benefit of the members of the District, provided, however, the Administrator so appointed may not act as a delegate from such District to any National Convention unless he has been chosen by secret ballot in any election in which all the members in good standing of such District were eligible to participate, and the Administrator shall not transfer to the National Association any current receipts or other funds of the District except the normal per capita tax and assessments payable by Districts not in trusteeships.

Section 11. Criminal or Civil Liability. A decision rendered in favor of or against any accused under the provisions of this Article shall not in any way effect his criminal liability or his civil liability under the law to the National Association or any District.

ARTICLE IX

Code of Trial by Charges

All violations of laws, rules or regulations of Districts shall be tried by the District within whose jurisdiction the offense has been committed and if charges are proven, the penalties imposed shall be enforced by the District of which the offender is a member, subject, however, to the right of appeal in accordance with the provisions of this Article.

When members of Districts are accused of an offense which, if proven, would subject them to a penalty, the proceedings in the premises shall be conducted in accordance with the following rules:

1. The accusation shall be reduced to writing, specifying, first, the charges; and, second, the circumstances and acts upon which the charges are based, together with the time and place, as nearly as can be ascertained.

2. The charges and specifications shall be presented to the District at a regular meeting, signed by two or more members in good standing, and if received by a vote of the District, the Chief Executive officer of a District, shall forthwith, and under the seal of the District notify the accused Brother that charges have been regularly preferred against him and shall serve or cause to be served upon the accused, personally, if practicable, otherwise by mail, directed to the last known address, with the postage prepaid thereon, a copy of the charges and specifications, attested by the Secretary, and under the seal of the District together with a notice directing the accused to be present at a regular meeting of the District or of a committee, duly appointed at a regular meeting when such charges will be heard. In case of personal service not less than ten, in the case of service by mail not less than twenty days thereafter. Should the accused reside beyond this jurisdiction, thirty days shall be allowed, to appear and answer such charges, or should the accused be employed in any service whereby he cannot personally be brought to trial, such time shall be granted as may be necessary in such case not exceeding sixty days. In case the residence of the accused cannot be ascertained, the District or Committee may proceed ex parte.

3. If the investigation be held before a committee, no person shall be present except the members of said Committee, the accuser, the accused, their counsel and the summoned witnesses, without the consent of the Committee.

4. Each witness shall be examined separately and apart, if desired by the accused, and all testimony shall be reduced to writing by the Committee and reported to the Districts.

5. At the same or such subsequent regular meeting thereafter as the District shall designate, the District shall give the accused, the accuser, or their counsel, an opportu-

nity to discuss the guilt or innocence of the accused, as set forth in the charges and specifications.

6. The parties interested shall have the benefit of counsel if they desire, provided said counsel shall be a marine engineer, and a member of a District in good standing.

7. After the parties and their counsel have been heard before the District, they shall retire therefrom, when the guilt or innocence of the accused shall be open to discussion by the members of the District.

8. The Members of such District shall decide by vote upon the guilt or innocence of the accused, a two-thirds vote of the members voting being necessary to convict; such vote being taken on each specification separately, and upon the charge, if convicted the District shall then by a two-thirds vote declare a degree of punishment.

9. The Committee shall have the power to send for persons and papers on behalf of the parties interested and to procure from the Chief Executive officer of a District, such summons thereof in due form as may be necessary for that purpose, and may adjourn the hearing from time to time in its discretion.

10. The Committee may employ a stenographer at the request of either or both parties making such request paying all the expenses thereof.

11. The accused or any member of the District aggrieved by the decision thereof may appeal the case to the National Executive Committee; but such appeal must be prepared and submitted within sixty days after such decision. The findings of the National Executive Committee shall be final, unless by appeal such decision is reversed by the National Convention.

12. In the event, an elected official of a District accused by a member, orally or in writing, of any misconduct or nonfeasance in office, said official shall have the right, at his option, to file charges against such member with the National Executive Committee. Upon the filing of such charges, all procedures to be followed shall be the same as

in the case of charges filed against an elected officer under Article VIII, and any penalty, if imposed shall be in accordance with Article X hereof.

ARTICLE X

Penalties

Section 1. Any member of a District who shall be found guilty in accordance with provisions of this Constitution of having violated any of the provisions of the Constitution of the National Marine Engineers' Beneficial Association or of the Constitution or Bylaws of the District or any provisions of any collective bargaining agreement covering the members of the District shall be subject to punishment as herein provided.

Section 2. Degree of Punishment

1. Public reprimand.
2. Fined for a proven offense.
3. Fined for each proven repetition of offenses.
4. Suspended pending reinstatement by the Association.
5. Suspended for a stated period.
6. Suspended pending payment of dues, fines or assessments, according to Bylaws of Districts.
7. Dropped from the roll of membership.
8. Dropped from the roll of membership with fine or fines charged to their account.

Penalties

Section 3. Districts shall not impose upon guilty members more than one of the above defined degrees of punishment upon any one charge, and in no case shall the total of fines for any several charges exceed $1,000.00 or the term of suspension exceed two years, suspended members who are not reinstated before the expiration of such period shall then be dropped from the roll of membership. In cases where members are fined they may be suspended pending

payment of same or they may be given sixty days before such suspension is enforced. Provided that for contempt of Rules of Order which may be imposed by the Chair at a meeting of a District the maximum fine shall be $10.00.

Section 4. When members are suspended their dues shall cease. If members are dropped from membership for any reason, and such persons desire to re-enter the District they must pay all their indebtedness to the District and make application for reinstatement as provided for in Article XIII, Section 5, of the National Constitution.

Section 5. Members who may lose their license on complaint of a Captain or owner or other person shall not be suspended or dropped from the roll of membership until their conduct shall have been investigated by the District of which they are members, which shall decide whether or not they shall retain their membership. Any disciplinary action taken against a member hereunder must be in compliance with the procedures set forth in Article IX hereof.

Section 6. The shipping rules of the Districts shall not be deemed to be in conflict with the trial procedure in Article IX, provided that accused violators of such shipping rules must, before being disciplined, be served with specific written charges, be given a reasonable time to prepare their defense and afforded a full and fair hearing, in accordance with orderly procedure as set forth in said shipping rules.

Section 7. Each District shall hold at least one meeting each month which shall be held on the date set forth in its Bylaws.

Section 8. No monies shall be appropriated from the treasury of any District for political purposes to any Communist or Communist front organization or to any totalitarian group or any Committees in defense of such groups. The above mentioned organizations shall be those specified on the official lists published by the U. S. Attorney General's Office.

ARTICLE XI

Order of Business Districts

Each District shall provide in its Bylaws for the order of business for its meetings.

ARTICLE XXII

Rules of Order

Each District shall provide in its Bylaws for the Rules of Order to govern the conduct of its meetings.

[fol. 60h] Proof of Service (omitted in printing).

[fol. 90] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated, Plaintiffs,

—against—

JESSE M. CALHOON, as President, etc., of District No. 1, National Marine Engineers' Beneficial Association, AFL-CIO, Defendant.

AFFIDAVIT OF BURTON H. HALL—Filed September 3, 1963

State of New York,
County of New York, ss.:

Burton H. Hall, being duly sworn, says that he is attorney for the plaintiff herein and that he submits this affidavit in opposition to defendant's motion to dismiss the complaint herein.

Defendant's motion, brought on by order to show cause, was served upon your deponent on Friday afternoon, August 16, 1963; the moving papers consisted solely of a two page affidavit plus the formal notices. No memorandum of law was served.

It is clear, however, that defendant is here proceeding upon a misconception of law. That misconception derives from a failure to perceive the distinction, so far as federal jurisdiction, is concerned, between a suit *to vindicate a candidacy* (over which there is no statutory federal jurisdiction in LMRDA cases) and a suit *to protect membership rights* (over which there is very clear statutory federal jurisdiction, set forth in Title I of the LMRDA).

Title I of the LMRDA—the "Bill of Rights of Members of Labor Organizations"—is exactly what it says it is, a bill of *members'* rights. Insofar as an officer or employee [fol. 91] of a union is also a *member* of that union and seeks protection *for his membership rights*, he is protected under Title I and federal jurisdiction attaches to his claim. This is so whether he is an officer of the union (cf. *Salzhandler* v. *Caputo*, 2d Cir. 1963, 316 F. 2d 445) or a staff employee of the union (cf. *King* v. *Grand Lodge*, N.D. Calif. 1963, 215 F. Supp. 351) or even president of the union (cf. *Vars* v. *Int'l Brotherhood of Boilermakers*, 2d Cir. 1963, 53 LRRM 2691, n/o/r).

But the important thing in all these cases is that the plaintiff—be he piecard or rank-and-filer—is asserting a *membership* right, and claiming that his *membership* right, protected under Section 101 of the LMRDA, is being infringed, or has been infringed—hence an action will lie under Section 102 of the LMRDA.

Contrariwise, there is no right under Title I—and hence no federal statutory right—*to be an officer* or *to be a union employee* or *to be a candidate for office*.

The present case illustrates this distinction. Here, three members bring suit, on behalf of all members of defendant union, to protect the members' statutory right, under Section 101(a)(1) of the LMRDA, *"to nominate candidates."* Plaintiffs were deprived of this right, so were many other members. And virtually all members of defendant union suffered infringement of this right to some degree. Plaintiffs do *not* assert any right *to be* candidates; they assert a membership right *to nominate* candidates. And, in their complaint (though not on their motion for a preliminary injunction) they also assert a membership right *to vote*

in union elections. These rights are protected under Title I of the LMRDA, and federal courts have jurisdiction over their claims.

[fol. 92] The distinction may be put another way: let us suppose that the plaintiffs in this case brought suit, not to protect their rights (and the rights of other members) to nominate candidates, but to vindicate their own candidacies —to demand simply that their names be placed on the ballot. If such were their claim, your deponent will concede (for the sake of the argument) that there would be no federal statutory jurisdiction. Because in such a (hypothetical) case, they would not be asserting rights *as members* but rather rights *as candidates*.

The distinction has been explained in a variety of cases, perhaps most helpfully in a case cited in plaintiff's memorandum of law: *Wayfield* v. *Babcock*, E.D.N.Y. 1963, 53 LRRM 2947, 47 LC Para. 18,375, n/o/r.

In that case, Judge Dooling for the Eastern District of New York emphasized that a federal court had jurisdiction —and he affirmatively took jurisdiction—over a suit claiming infringement of plaintiffs' rights to nominate candidates secured to them by Section 101(a)(1) of the LMRDA. And he emphasized the distinction that separates such a case from that brought to protect claimed candidacy rights: "Different are the cases that deny that Title I confers any rights of action in the federal court on a candidate as such or to vindicate a candidacy."

The Court of Appeals for this Circuit has flatly held that a federal court *does* have jurisdiction over a suit brought, in advance of an election, to protect the rights of union members to vote in that election and to nominate candidates, by seeking fair election procedures. *Boggia* v. *Hoffa*, 2d Cir. 1961, 47 LRRM 2594, 41 LC Para. 16,732, n/o/r; and cf. the other cases cited in plaintiffs' memorandum of law. *Boggia* was originally brought in State court but was removed to federal court, specifically *because* the federal court had jurisdiction under Title I of the LMRDA. The present case stands on the same footing.

[fol. 93] Wherefore, plaintiffs' motion for a preliminary injunction should be granted—for the members' right to nominate candidates in the 1963 elections of defendant has

been, and is being, in fact infringed—and defendant's motion to dismiss should be denied.

Burton H. Hall.

Sworn to before me this 20th day of August, 1963.

Gussie Chabus, Notary Public, State of New York, No. 03-0608850, Qualified in Bronx County, Cert. filed in New York County, Commission Expires March 30, 1965.

[fol. 94] Summons and Return (omitted in printing).

[fol. 97] [File endorsement omitted]

In United States District Court

Southern District of New York

63 Civ. 2401

Raymond H. Harvey, Herman Shapiro and John Galletta, each of them individually and on behalf of all other persons similarly situated, Plaintiffs,

—against—

Jesse M. Calhoon, as President, or Herbert W. Peters, as Secretary-Treasurer of District No. 1, National Marine Engineers Beneficial Association, AFL-CIO, Defendant.

Burton H. Hall, Esq., of New York, N. Y., Attorney for Plaintiffs.

Pressman & Scribner, Esqs., of New York, N. Y., Attorneys for Defendant, David Scribner, Esq., Of Counsel.

Opinion—August 31, 1963

Feinberg, D.J.

This is a motion for a preliminary injunction brought by three members of District No. 1, National Marine Engineers [fol. 98] Beneficial Association ("District No. 1"), on behalf of themselves and others similarly situated, against District No. 1, its President or Secretary-Treasurer. The

complaint alleges jurisdiction under Section 102 of the Labor-Management Reporting and Disclosure Act of 1959 (the "Act"),[1] 29 U.S.C. § 412. Plaintiffs ask this Court to enjoin District No. 1 from holding a general election of local union officers on the ground that plaintiffs' rights to nominate candidates, as secured to them under Section 101(a)(1) of the Act, 29 U.S.C. § 411(a)(1), have been infringed. Plaintiffs also allege that defendant District No. 1 has failed to appoint an impartial administrator to supervise the forthcoming election, and claim that this failure not only violates their rights to vote under Section 101(a)(1) of the Act, 29 U.S.C. § 411(a)(1), but also contravenes a provision of the District's bylaws which requires designation of an impartial administrator. Defendant has filed a cross-motion to dismiss the complaint on the grounds that this Court lacks jurisdiction over the subject matter, and that the complaint fails to state a claim upon which [fol. 99] relief can be granted.

The important facts are not in dispute, and, as they appear from the affidavits filed by both parties, may be summarized as follows: the National Marine Engineers Beneficial Association ("NMEBA"), a national affiliate of the AFL-CIO, represents over ninety per cent of the licensed marine engineers in the United States. It is now composed of various district organizations; District No. 1, of which plaintiffs are members in good standing, has over 6,000 members. The District will hold a general election during the ninety-day period commencing September 1, 1963, and it is this election which plaintiffs seek to enjoin. Counsel have stipulated that the mailing of ballots would not of itself adversely affect or enlarge the rights and obligations of the parties to the proceeding.

Prior to January 1, 1961, NMEBA was composed of various "locals." At that time, a member could nominate any other member for local office, subject to certain eligibility requirements. On January 1, 1961, NMEBA was [fol. 100] reorganized on a "district" basis, and thereafter certain changes, of which plaintiffs complain, were made in nomination procedures and eligibility requirements for officers.

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[1] Commonly known as the "Landrum-Griffin Act."

(1) Members of District No. 1 are confined to self nomination. Article X of the bylaws of District No. 1 provides:

"Elections for District-wide Offices

"Section 1. Nominations. Any member may submit his name for nomination for the offices of District President, District Vice President, Branch Agent, Patrolman . . . or Representative to the National Convention by delivery in person or sending by registered mail, a letter addressed to the Credentials Committee."[2]

(2) In March 1963, the national constitution of NMEBA was amended to provide that only those non-officer members who have served 180 days or more of sea time on NMEBA-contracted vessels in two of the previous three years are eligible for nomination, that no member may be a candidate for District President unless he is a full time paid official of the union, and that no member may run for Dis- [fol. 101] trict office unless he has been a member of NMEBA for five years. Article X, Section 9 of the Constitution of NMEBA provides:

"Any member shall be eligible for nomination to and election as a full time and paid elective office of a District provided he is at the time of nomination and election a member of good standing and (a) has been a member of the National Association or of any other organization which has duly affiliated with the National Association, for 5 years immediately preceding the date of closing of nominations; and (b) has been a member of the District and/or predecessor Subordinate Association for 2 years immediately preceding said date; and (c) has had either 180 days of employment on vessels covered by collective bargaining agreements with the Union during each of any 2 full calendar years of the 3 calendar years immediately preceding the closing date of nominations, or equal time served as full time and paid elected or appointed official of the National Association or of a Subordinate Association or the Dis-

[2] See Exhibit "A" attached to defendant's Affidavit in Opposition to Application for Preliminary Injunction.

trict or of any other organization which has duly affiliated with the National Association.

"A candidate for District President, in addition to the qualifications specified above, must have previously been elected and served as a full time and paid official of a Subordinate Association, District or of any other organization which has duly affiliated with the National Association."[3]

[fol. 102] (3) Under a ruling of the Credentials Committee of District No. 1, members are prohibited from nominating themselves to more than one office.

Plaintiffs contend that the above bylaw, constitutional amendment and ruling by the Credentials Committee unreasonably deprive members of District No. 1 of their right to nominate candidates as guaranteed to them under Section 101(a)(1) of the Act, 29 U.S.C. § 411(a)(1). Defendant contends that this Court is without jurisdiction to entertain this motion, that plaintiffs have made no showing warranting the relief sought, that plaintiffs have failed to exhaust their intra-union remedies, and that, in any event, plaintiffs have been guilty of laches.

Consideration of defendant's jurisdictional argument requires an examination of the Labor-Management Reporting and Disclosure Act of 1959, a comprehensive statute which protects the rights of union members through various remedies. Title I of the Act is entitled "Bill of Rights of Members of Labor Organizations." Contained within Title I is Section 101(a)(1), 29 U.S.C. § 411(a)(1), which pro-[fol. 103] vides:

"Equal rights.—Every member of a labor organization shall have equal rights and privileges within such organization to *nominate candidates*, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, *subject to reasonable rules and regulations in such organization's constitution and bylaws.*" (Emphasis added.)

[3] See Exhibit "C" attached to defendant's Affidavit in Opposition to Application for Preliminary Injunction.

A procedure to enforce these rights is provided in Section 102 of the Act, 29 U.S.C. § 412. This section permits any person, whose rights under Title I have been infringed, to bring a civil action in a Federal District Court for appropriate relief.

Title IV of the Act is entitled "ELECTIONS" and subtitled "Terms of office; election procedures." This Title includes Section 401(e) of the Act, 29 U.S.C. § 481(e), which states:

> "In any election required by this section which is to be held by secret ballot *a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504* [fol. 104] *and to reasonable qualifications uniformly imposed)* and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof." (Emphasis added.)

The remedy for a violation of Section 401(e) of the Act, 29 U.S.C. § 481(e), is specifically set forth in Section 402 of the Act, 29 U.S.C. § 482. Section 402, in substance, provides a post-election remedy whereby complaint is made to the Secretary of Labor who institutes a civil action if he finds upon investigation that there is probable cause. That section states:

> "(a) A member of a labor organization—
>
> (1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or
>
> (2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,
>
> may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and bylaws of the labor

organization pertaining to the election and removal [fol. 105] of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

"(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this subchapter and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization."

Thus, the structure of the Act clearly differentiates between violations of Title I and Title IV, and different remedies are provided for each.

Defendant's jurisdictional attack is based on two premises: this Court has no pre-election jurisdiction over Title IV violations, and plaintiffs' complaint alleges, in fact, [fol. 106] only such violations, although jurisdiction is stated in terms of Title I.

On the first point, the cases indicate that defendant is correct and that the only remedy for violations of Title IV is the post-election procedure initiated by a complaint to the Secretary of Labor. This was the conclusion reached by Judge Wyatt of this Court in *Jackson* v. *NMEBA*[4] decided only a few weeks ago. That case involved an attack on two of the rules complained of by plaintiffs here (the self-nomination requirement and the requirement of previous

[4] 63 Civ. 2226, S.D.N.Y., August 16, 1963.

service as a full time paid elected official). In the course of denying relief to plaintiffs, the Court stated:[5]

> "It is the eligibility requirements which plaintiff attacks and these are *exclusively* dealt with by Section 401(e) [of Title IV]. Where a particular subject is dealt with by a section of the Act—for example, the eligibility of candidates in Section 401(e)—it must be assumed that Congress intended the specific provisions to govern and not the general provisions of Section 101(a) [of Title I]."

[fol. 107] Other cases support the proposition that the Federal District Courts do not have jurisdiction for violations of Title IV, except in accordance with the procedure set up in the statute which calls, in the first instance, for an investigation by the Secretary of Labor. See *Mamula* v. *United Steelworkers*, 304 F.2d 108 (3 Cir.), *cert. denied*, 371 U.S. 823 (1962); *Colpo* v. *Highway Truck Drivers and Helpers*, 201 F. Supp. 307 (D. Del. 1961), *vacated as moot*, 305 F.2d 362 (3 Cir.), *cert. denied*, 371 U.S. 890 (1962); *cf. Hamilton* v. *Guinan*, 199 F. Supp. 563 (S.D.N.Y. 1961); *Acevedo* v. *Bookbinders and Machine Operators*, 196 F. Supp. 308 (S.D.N.Y. 1961). Although a contrary view has been advanced,[6] it appears that the authority is the other way.

Plaintiffs appear to recognize the force of this authority, because they emphasize that complaint is made only of alleged violations of Title I. Each of the rules they attack, according to plaintiffs, interferes with the right to nominate [fol. 108] as guaranteed them by Section 101(a)(1) of the Act quoted above. Plaintiffs contend, for example, that they may challenge under Title I the reasonableness of the requirement of sea time because they have a right to nominate someone who has not had sea time. However, the

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[5] *Id.* at 5.

[6] See Summers, *Pre-Emption and the Labor Reform Act—Dual Rights and Remedies*, 22 Ohio St. L. J. 119, 135-140 (1961); American Bar Ass'n, Labor Relations Law, 1962 Proceedings, at 74-76.

requirement of sea time is clearly a "qualification" on candidacy dealt with by Title IV. It is true that a requirement of sea time, as a prerequisite to candidacy, limits the number of people plaintiffs can nominate. However, it is hard to imagine any rule or requirement on candidacy, no matter how reasonable, which would not similarly limit the number of people plaintiffs might nominate. If plaintiffs' argument were accepted, every eligibility requirement for office would fall within Title I. However, the structure of the Act is clearly different. The reasonableness of the sea time requirement, therefore, must be tested in accordance with the procedures set forth for violations of Title IV and not through the procedures under Title I.

[fol. 109] A similiar point in an analogous situation was made recently in *Jackson* v. *International Longshoremen's Ass'n*, 212 F. Supp. 79 (E.D. La. 1962), where plaintiffs complained of the disqualification of a candidate for whom they wanted to vote. The Court refused an injunction and pointed out as follows (212 F. Supp. at 82):

> "In the present case, there can be no question but what the complainants herein were not deprived of the right to nominate, nor were they deprived of the right to vote. *Title I of the Act does not, of course, guarantee to any union member the right to vote for a specific person, but guarantees him only the right to vote for a duly nominated and qualified candidate.* The pleadings, on their face, affirmatively show that the complainants herein did, in fact, nominate the candidates of their choice. It was subsequent to the nomination, and during the process of certifying candidates as to their qualifications, that the present dispute actually arose. Whether or not the disqualification of the candidates in question was proper is a matter to be resolved in accordance with the provisions of Title IV of the Act. Title IV deals comprehensively with the procedure for nominating and electing officials. It provides that reasonable opportunities must be given members to nominate, and that every member in good standing shall be eligible to be a candidate and to hold office subject to, or course [sic], reasonable rules and regu-

[fol. 110] lations of the union. Title IV further specifically sets forth in 29 U.S.C.A. § 482 that violation of the provisions outlined therein can only be enforced by the Secretary of Labor once an election is held." (Emphasis added.)

All of the matters complained of by plaintiffs appear to be qualifications on eligibility for candidacy and, therefore, their reasonableness or lack of reasonableness will have to be tested in accordance with Title IV procedures. This is certainly true not only of the sea time requirement, but also of the requirements of five year prior membership in the union in order to run for office, limitation to candidacy for only one office, and the necessity of being a full time paid prior official in order to run for union president. It may be possible to view the self-nomination requirement as a Title I problem rather than a Title IV problem, but even if it is, the requirement seems reasonable. This certainly was the Court's view in *Jackson* v. *NMEBA, supra,* when it stated that such a provision "makes it as easy to be nominated [fol. 111] as possible." *Id.* at 5. Defendant points out that under this provision, a member does not even have to attend a union meeting or conference to place his name in nomination, but can write a letter to the union from any port in any part of the world declaring his candidacy. While the new provision does have a limiting effect in some ways, the argument that it is, on the whole, reasonable is persuasive.

Therefore, with regard to all of the complaints on eligibility and nomination procedure, it appears that this Court is without jurisdiction to consider them or in the case of the self-nomination procedure, the complaint is not well-founded. The cases relied on by plaintiffs do not compel a contrary view. *Wayfield* v. *Babcock*, 47 CCH Lab. L. Rep. ¶ 18,375 (E.D.N.Y. 1963), did not deal with a Title IV violation, but with a Title I violation involving an allegation that a member's right to vote in secret was lost. Similarly, *Boggia* v. *Hoffa*[1] dealt with eligibility of members to vote, also clearly a Title I problem.

[1] 41 CCH Lab. L. Rep. ¶ 16,731 (E.D.N.Y.), *modified*, 41 CCH Lab. L. Rep. ¶ 16,732 (2 Cir. 1960), *motion to certify result of election granted*, 41 CCH Lab. L. Rep. ¶ 16,733 (E.D.N.Y. 1962).

With regard to plaintiffs' claim that an impartial administrator has not been designated in accordance with the Dis- [fol. 112] trict's bylaws, the answering affidavit of defendant makes clear that an impartial administrator has, in fact, been designated.[8] Since this is not seriously in dispute, the Court will not consider the claim further at this time.

On the entire record, I do not feel that plaintiffs have shown by clear and convincing facts that they have a reasonable probability of success in final hearing on this matter. Because of the disposition on defendant's main point, it is unnecessary to consider its other arguments, such as failure to exhaust intra-union remedies and laches.

The foregoing shall constitute findings of fact and conclusions of law in accordance with Fed. R. Civ. P. 52(a). The motion to dismiss is granted and the application for a preliminary injunction is denied. Submit order on notice.

Dated: New York, N. Y., August 31, 1963.

Wilfred Feinberg, U. S. D. J.

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[8] Affidavit of Jesse S. Calhoon in Opposition to Application for Preliminary Injunction, pp. 1-3.

[fol. 114] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

63 Civ. 2401

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated, Plaintiffs,

—against—

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of District No. 1, National Marine Engineers Beneficial Association, AFL-CIO, Defendant.

ORDER—September 4, 1963

This cause came on to be heard before the Court on August 20, 1963, on plaintiffs' application for a preliminary injunction and on defendants' motion to dismiss the complaint on the ground that the Court lacks jurisdiction over the subject matter and the Court having denied the application for a preliminary injunction and having granted the motion to dismiss the complaint, and the Court having filed its Opinion, Findings of Fact and Conclusions of Law, dated August 31, 1963, it is hereby

Ordered and Adjudged that the complaint herein be and the same is hereby dismissed for want of jurisdiction and that the application for a preliminary injunction be and the same is hereby denied and that defendants recover of the plaintiffs their costs.

Dated: September 4, 1963.

Wilfred Feinberg, United States District Judge.

Judgment Entered 9/4/63, James E. Valeche, Clerk.

[fol. 114a] Copy received September 4, 1963, and approved in form.

Burton H. Hall, Attorney for Plaintiffs.

[fol. 115] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

63 Civ. 2401

[Title omitted]

NOTICE OF APPEAL—Filed September 5, 1963

Notice is hereby given that the plaintiffs herein hereby appeal to the United States Court of Appeals for the Second Circuit from the order entered in this action on September 4, 1963, denying plaintiffs' motion for a preliminary injunction and dismissing the complaint herein, and from all parts and portions of said order.

Dated: September 5, 1963.

Burton H. Hall, Attorney for Plaintiffs, Office and P. O. Address, 136 Liberty Street, New York 6, N. Y.

To:

Pressman & Scribner, Esqs., 50 Broadway, New York, N. Y. 10004.

[fol. 116] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 117]

IN UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 168—September Term, 1963.

Argued October 23, 1963

Docket No. 28445

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated, Plaintiffs-Appellants,

—v.—

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of DISTRICT NO. 1 NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO Defendant-Appellee.

Before: LUMBARD, Chief Judge, MEDINA and FRIENDLY, Circuit Judges.

Appeal by members of a labor union from an order of the District Court for the Southern District of New York, Wilfred Feinberg, Judge, dismissing for want of jurisdiction a complaint alleging that the union had deprived plaintiffs of their equal right to nominate in violation of §101 (a)(1) of the Labor-Management Reporting and Disclosure Act of 1959. Reversed.

[fol. 118] Burton H. Hall, New York, N. Y., for Appellants.

David Scribner (Pressman & Scribner, New York, N. Y.), for Defendant-Appellee.

OPINION—November 7, 1963

FRIENDLY, Circuit Judge:

On August 12, 1963, plaintiffs, members of District No. 1, National Marine Engineers' Beneficial Association, a labor organization consisting of some 6000 marine engineers, in-

stituted this action in the District Court for the Southern District of New York against the District Association, its President and its Secretary-Treasurer. The complaint asserted that the action was brought on behalf of plaintiffs and all other similarly situated members of the union to prevent the infringement of rights guaranteed by §101 (a)(1) of the Labor-Management Reporting and Disclosure Act of 1959 (hereafter LMRDA), 29 U. S. C. §411(a)(1); the jurisdiction of the district court was laid under §102. Believing that in fact the complaint alleged only a violation of §401 of LMRDA, 29 U. S. C. §481, and that the Act did not confer jurisdiction on a federal court to entertain a suit by union members to prevent a violation of that section, Judge Feinberg dismissed the complaint for want of federal jurisdiction. We think the complaint alleged a violation of §101(a)(1) and that federal jurisdiction existed under §102.

The complaint set forth that bylaws, imposed upon District No. 1 by a District Executive Committee composed of officials of its various locals, provide that the only candidate whom a member may nominate for any office is himself; that the practice of the District prohibits a member from nominating himself for more than one District office; that the national constitution of the union further restricts [fol. 119] members' right to nominate by providing that no member other than an incumbent official is eligible for nomination or election to a full-time elective office unless he has been a member for five years and has served 180 days or more of sea time on vessels covered by collective bargaining agreements with the national organization or its subsidiary bodies in each of two of the three years preceding nomination; and that the national constitution further provides that a candidate for the office of District President must have previously been elected and served as a full-time and paid official of an organization affiliated with the national body. The complaint prayed that an impending election under these provisions should be enjoined, as well as for other relief. An affidavit of plaintiff Harvey, submitted in support of a motion for a temporary injunction, enlarged upon the complaint by alleging that defendant was holding its first general election during the 90-day period beginning

September 1, 1963; and that each plaintiff had been denied any right to nominate because he could nominate only himself but was ineligible for failure to meet the 180-day sea time requirement. Defendant's cross-motion to dismiss the complaint did not challenge plaintiffs' allegations but contended that these did not make out a case under §101(a)(1) of LMRDA and that in any event the court was without jurisdiction.

Title I of LMRDA, "Bill of Rights of Members of Labor Organization," was added during the Senate's consideration of the Kennedy-Ervin bill, S. 1555, 86th Cong., 1st Sess. (1959), as reported by the Committee on Labor and Public Welfare. The initial proposal by Senator McClellan, adopted on April 22, 1959, see NLRB Legislative History of Labor-Management Reporting and Disclosure Act of 1959, 1102, 1119 (1959), was substantially amended in a form proposed by Senator Kuchel and passed by the Senate on April 25, *id.* at 1220, 1239 ff. The bill later passed [fol. 120] by the House of Representatives and the statute as enacted contained provisions similar to Senator Kuchel's amendment. For our purposes the vital ones are the portion of §101(a)(1) which declares that "Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization * * *" and §102, which reads as follows:

> "Sec. 102. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

The Kennedy-Ervin bill had included a Title III—Elections which became Title IV of LMRDA. Section 401 contains a considerable number of substantive provisions. Among these are requirements concerning the frequency

and manner of election of officers, distribution by the union of campaign literature at a candidate's request and nondiscrimination in the use of membership lists,[1] availability of such lists for inspection by a candidate, "adequate safeguards to insure a fair election • • • including the right of any candidate to have an observer at the polls and at the counting of the ballots," the notice of an election to be given to members etc. Most important here are the first and third sentences of §401(e):

> [fol. 121] "(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. • • • Each member in good standing shall be entitled to one vote."

Section 401 is followed by §402, entitled "Enforcement." This says, in relevant part, that a member of a labor organization who has exhausted union remedies or has failed to obtain a final decision within three months after invoking them "may file a complaint with the Secretary [of Labor] within one calendar month thereafter alleging the violation of any provision of section 401"; and that

> "(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization main-

[1] This requirement is made "enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office." §401(c).

tains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe."

[fol. 122] Section 403, headed "Application of Other Laws," provides

"Sec. 403. No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive."

It is plain enough that §401 covers a much wider territory with respect to union elections than the guarantees of equal rights and privileges to nominate and to vote contained in §101(a)(1). Whereas §101(a)(1) is directed solely to basic rights of members, §401 deals both with rights of members, which it grants with far greater elaboration and specificity than the earlier section, and with rights of candidates.

It is not contended that the instant action, brought before the distribution of ballots had begun and for the purpose of enjoining an election under the allegedly illegal provisions of the District's bylaws and the national's constitution, encounters the bar of the last sentence of §403, making a suit by the Secretary of Labor the exclusive remedy "for challenging an election already conducted * * * ".[2] Neither,

[2] Counsel stipulated that the mailing of the ballots would not adversely affect or enlarge the rights and obligations of the parties. In any event, an election has not been "conducted" in our view at least until the time for balloting has expired. We are not

in the view we take of the case, need we consider the much [fol. 123] mooted question whether the substantive provisions of §401 (other than the provision noted in fn. 1) create claims enforceable by private pre-election suits in state or federal courts.[3] For we hold that the complaint alleged a violation of §101(a)(1), and that the district court had jurisdiction under §102 to remedy it.

If the union's constitution and bylaws had provided that only paid officials could make nominations for District President and that only incumbent officers or members with 180-day sea time in each of two of the three preceding years could make nominations for any other office, it could hardly be asserted that the members had "equal rights and privileges * * * to nominate candidates." Indeed, such a classification of union members would have been deemed invalid at common law, long before the LMRDA. See *Cameron* v. *International Alliance of Theatrical Stage Employees*, 118 N. J. Eq. 11, 176 Atl. 692 (Ct. Err. & App. 1935). Yet the combined effect of the eligibility requirements and the restriction to self-nomination is precisely that. With respect to the rules here in question, the statement of another district judge, relied on by the opinion below, that self-nomination "makes it as easy to be nominated as possible,' is thus too facile. We have no occasion now to consider whether

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called upon to consider whether if an appropriate action has been begun before an election is "conducted" but the election has not been enjoined, §403 would require the court to stop in its tracks once the election was "conducted."

[3] The affirmative, as to most of the provisions, is argued in Summers, Preemption and the Labor Reform Act—Dual Rights and Remedies, 22 Ohio State L. J. 119, 135-140 (1961). A contrary view, at least as to federal jurisdiction, is taken in such cases as *Johnson* v. *San Diego Waiters Union*, 190 F. Supp. 444 (S. D. Calif. 1961), *Colpo* v. *Highway Truck Drivers*, 201 F. Supp. 307 (D. Del. 1961), vacated as moot, 305 F. 2d 362 (3 Cir.), cert. denied, 371 U. S. 890 (1962), and *Jackson* v. *International Longshoremen's Ass'n*, 212 F. Supp. 79 (E. D. La. 1962). We have noted *Mamula* v. *United Steelworkers of America*, 304 F. 2d 198 (3 Cir.), cert. denied, 371 U. S. 823 (1962) and *Beckman* v. *Local No. 46 Int'l Ass'n of Bridge etc. Workers*, 314 F. 2d 848 (7 Cir. 1963), but find it unnecessary to express any opinion as to the conclusions reached on the facts there at issue.

such severe eligibility requirements as have here been imposed, especially as to the District Presidency, or the self-[fol. 124] nomination restriction, if either stood alone, would still infringe the guarantee of §101(a)(1) to "equal rights and privileges * * * to nominate candidates" or would only raise a question of denial of "a reasonable opportunity * * * for the nomination of candidates" etc. under §401(e). The fact that plaintiffs sought unsuccessfully to nominate themselves and in that sense are complaining also as candidates does not blot out the main trust of their complaint—that the union has deprived members of the equal rights and privileges to nominate guaranteed by §101(a)(1).

Whatever the right answer may be with respect to the permissibility of pre-election suits to enforce rights granted only by §401, we see no reason to think that the assurance of "a reasonable opportunity * * * for the nomination of candidates" given by §401(e), and its consequent overlap with §101(a)(1), should be considered to have withdrawn jurisdiction granted by §102 in a case not affected by the exclusive "post-election" provision of §403. The Senate superimposed Title I on the Kennedy-Ervin bill because it was not satisfied that the latter, including the provisions now contained in Title IV, went far enough in protecting basic rights of union members. It agreed with Senator McClellan's position that the bill should define fundamental rights of union members "just as the rights of the American people are set forth in the Bill of Rights of the Constitution of the United States." Legislative History, 1104, and overrode Senator Kennedy's initial objection that union members were better protected "by present State law, by the provisions of the bill, and by the Taft-Hartley Act." Legislative History, 1108.[4] Moreover, whereas the Mc-

[4] Senator Kennedy in no way opposed the substance of the Bill of Rights proposed by Senator McClellan but feared that it might eliminate protection afforded by state law without creating a satisfactory alternative. Although he voted against the McClellan amendment, Legislative History, 1119, his objections apparently were met by the antipreemption language in §103 of Senator Kuchel's substitute, Legislative History, 1221, and he voted for Title I in that form, Legislative History, 1239.

[fol. 125] Clellan amendment had provided for civil enforcement of the Bill of Rights through suit by the Secretary of Labor (see §103 of the amendment, Legislative History, 1102), the Kuchel amendment substituted the private suit now embodied in §102, this being described as "one of the major changes in the proposal." Legislative History, 1232.

The District Court thus erred in dismissing the complaint for want of jurisdiction.[5] The plaintiffs' right to a temporary injunction against the holding of the election under the present constitution and bylaws is plain, and such an injunction should issue promptly. The district court should also require the union to submit new provisions as to the right to nominate that will meet the mandate of §101(a)(1). See *Virginian Ry. Co.* v. *System Federation No. 40,* 300 U. S. 515, 552-53 (1937); *Brown* v. *Board of Education,* 349 U. S. 294, 300 (1955).

The judgment is reversed and the cause remanded for further proceedings consistent with this opinion. The mandate will issue forthwith.

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[5] We have not overlooked an argument that the first sentence of §403 protects a union against being required to conduct an election "in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title," and that plaintiffs must thus rely on §401(e) rather than on §101(a)(1) in order to win, since §101(a)(1) is not in "this title." We do not think the statute should be read so literally, particularly in view of the legislative history summarized above, and therefore need not consider an alternative argument that in a suit based on §101(a)(1) a plaintiff can avail himself of §401(e) as a replication to a defense based on §403 even if §402 is the exclusive remedy for affirmatively enforcing Title IV rights (other than those noted in fn. 1). Compare *Skelly Oil Co.* v. *Phillips Petroleum Co.,* 339 U. S. 667, 672 (1950).

[fol. 126]

IN UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Present: Hon. J. Edward Lumbard, Chief Judge, Hon. Harold R. Medina, Hon. Henry J. Friendly, Circuit Judges.

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated, Plaintiffs-Appellants,

v.

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of DISTRICT NO. 1 MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO, Defendant-Appellee.

JUDGMENT—November 7, 1963

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is revised and that the action be and it hereby is remanded for further proceedings consistent with the opinion of this court with costs to the appellants.

A. Daniel Fusaro, Clerk.

[fol. 127] [File endorsement omitted]

[fol. 128]

IN UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 28445

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated, Plaintiffs-Appellants,

—against—

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer, of DISTRICT NO. 1 NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO, Defendant-Appellee.

ORDER TO SHOW CAUSE

Upon all the papers and proceedings herein and the affidavit of David Scribner, sworn to November 8, 1963, it is

Ordered that the appellants show cause to this Court in Room , United States Court House, Foley Square, City and State of New York, on the day of November, 1963, at o'clock of that day or as soon thereafter as counsel can be heard why an order should not be made staying the mandate or decree of this Court pending action by the Supreme Court of the United States on the application of defendant-appellee for certiorari to the said Court, or in the alternative that the Court withhold the issuance of mandate until expiration of fifteen days from November 7, 1963, the date of the opinion of this Court and for further relief as may be appropriate, and

It Is Further Ordered that service of this order to show cause, together with a copy of the papers hereto attached, upon Burton H. Hall, Esq., 136 Liberty Street, New York, [fol. 129] New York on or about November , 1962, at o'clock be deemed sufficient service.

.....

Dated: November , 1963.

The within motion will be submitted to the Court (without oral argument) on Tuesday, November 12, 1963 on this and any papers in opposition which will be left with the clerk on or before 10:30 A.M. of that day.

A. Daniel Fusaro, Clerk.

[fol. 130]

IN UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

AFFIDAVIT OF DAVID SCRIBNER

State of New York,
County of New York, ss.:

David Scribner, being duly sworn, deposes and says that he is a member of the firm Pressman & Scribner, attorneys for the appellee Union, and is fully familiar with all of the facts and circumstances herein.

1. The opinion of this Court dated November 7, 1963, which appellee received notice of from the Clerk of the Court on the morning of November 8, 1963, and which deponent has read, reverses the judgment of the Court below and remands for the prompt issuance of a temporary injunction against the holding of the election under the present Constitution and By-Laws of appellee. The opinion concludes with the statement "The mandate shall issue forthwith."

2. It appears that if the mandate is in effect issued forthwith that appellee will be denied the opportunity under Rule 28 of applying to this Court within fifteen days after [fol. 131] the filing of the Court's opinion for a rehearing. Deponent will be able to determine whether or not a petition for rehearing will be filed only after he has had the opportunity fully to study and analyze the opinion of this Court.

3. Should the mandate issue forthwith and an injunction against the continuing conduct of the current election be issued, appellee will be denied any meaningful or effective

recourse to this Court for rehearing and will have been finally and effectively denied without any recourse whatsoever his right to petition for certiorari to the Supreme Court of the United States, since for all practical purposes the issues may well be considered mooted should the election be called off in compliance with the injunction which this Court has directed the District Court to issue. Appellee will thereby be denied its right to appeal.

4. Deponent states as a fact to this Court that the count in the election in issue will not be held until January 15, 1964, pursuant to the direction of the Union made in mid-October, 1963. Appellant will therefore in no way be prejudiced by the granting of a stay pending determination of petition for certiorari. However, the appellee Union is ready further to delay the count of the election in the event the Supreme Court has not by January 15, 1964 ruled on the petition for certiorari to be filed by appellee.

5. The appellee has an arguably meritorious position for the granting of a petition for certiorari in that there is an apparent conflict between the decision of this Court and that of the Third Circuit in *Mamula* v. *United Steelworkers*, 304 F. 2d 108 (1962) cert. denied, 371 U.S. 823 (1962) and because the issues here involved are of great public importance in that the interpretation by this Court of the [fol. 132] Labor-Management Reporting and Disclosure Act of 1959 are in conflict not only with the decision of the Third Circuit but, as the Court noted, with decisions of district courts in other circuits.

6. Substantially greater injury will be occasioned the Union and its members if the application for a stay is denied and the present election set aside and a new election ordered than would be occasioned appellant if the stay were granted.

7. In the event this Court denies this application for a stay pending determination of the Supreme Court on a petition for certiorari to be filed by appellee, the Court is respectfully requested to stay the issuance of mandate for a few days to give deponent an opportunity to make application to a Justice of the United States Supreme Court for such a stay.

8. Appellee assures the Court that it will promptly file a petition for certiorari in the United States Supreme Court should the stay be granted.

9. No application for the relief herein requested has been heretofore made to this or any other court.

David Scribner.

Sworn to before me this 8th day of November, 1963.

Barbara Ann Weinstein, Notary Public, State of New York, No. 24-9581575, Qualified in Kings County, Cert. filed in New York County, Commission Expires March 30, 1964.

[fol. 133] [File endorsement omitted]

DENIAL OF MOTION TO STAY ISSUANCE OF MANDATE

Motion denied.

J. Edward Lumbard, Harold R. Medina, Henry J. Friendly.

12 Nov. 1963.

[fol. 134]

IN UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

Present: Hon. J. Edward Lumbard, Chief Judge, Hon. Harold R. Medina, Hon. Henry J. Friendly, Circuit Judges.

RAYMOND H. HARVEY, HERMAN SHAPIRO and JOHN GALLETTA, each of them individually and on behalf of all other persons similarly situated, Plaintiffs-Appellants,

v.

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of DISTRICT NO. 1 MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO, Defendant-Appellee.

ORDER DENYING MOTION TO STAY ISSUANCE OF MANDATE—November 12, 1963

A motion having been made herein by counsel for the appellee to stay the issuance of the mandate pending application for a writ of certiorari to the Supreme Court of the United States or for other and further relief,

Upon consideration thereof, it is

Ordered that said motion be and it hereby is denied.

A. Daniel Fusaro, Clerk.

[fol. 135] [File endorsement omitted]

[fol. 136] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 137]

SUPREME COURT OF THE UNITED STATES

No. 688, October Term, 1963

JESSE M. CALHOON, as President, or HERBERT W. PETERS, as Secretary-Treasurer of DISTRICT NO. 1 NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO, Petitioner,

vs.

RAYMOND H. HARVEY et al., Individually and on Behalf of Other Persons Similarly Situated.

ORDER ALLOWING CERTIORARI—January 20, 1964

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. The Solicitor General is invited to file a brief expressing the views of the United States.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.